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CITY OF SAN DIEGO  
M E M O R A N D U M

DATE: October 5, 2007

TO: Council President Peters, and Members of City Council

FROM: R.F. Haas, Deputy Chief of Public Works

SUBJECT: October 9, 2007 Council Item No.53 - Regents Road Bridge and Limited Roadway Changes Project 2<sup>nd</sup> Reading of Ordinance

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The information herein is intended to emphasize or augment comments made by Engineering and Capital Department staff at the Council hearing on September 4, 2007, for Item 334, Agreement with Project Design Consultants for Regents Road Bridge and Limited Roadway Changes Project.

The agreement with Project Design Consultants (PDC) is a not-to-exceed contract for \$4,861,373. This amount cannot be increased without City Council authorization. However, the contract does not obligate the City to spend all of these funds. The Engineering Project Manager maintains control over the project budget. The City may choose to reduce or terminate the contract with PDC at its discretion. Nothing in the agreement commits the City to build the Regents Road Bridge or pay PDC any amount of this not-to-exceed contract for work not required, or authorized by the City's project manager.

During work on the project, PDC will be under the close supervision of City staff who are registered professional engineers. PDC will not undertake any task without prior approval of City staff. City staff will have control over the level of project design services required at all times. City staff will direct the specific tasks and level of effort undertaken by PDC. After PDC has been directed to complete specific tasks, City staff will provide oversight of the project and PDC's work to ensure that funds are spent as needed to adequately define and describe the bridge project as required to complete the environmental review under CEQA.

Project opponents suggested that the PDC agreement be limited to 10-15% "pre-design" effort. This would be inconsistent with industry standards. Agreements for professional design services typically provide for a complete project design that is ready for construction. This is the most time efficient and cost effective approach. This is a complex project requiring an extraordinary level of public outreach, making it difficult to arbitrarily identify the level of effort required. Furthermore, limiting the agreement on such a controversial project might actually hinder completion of the desired work if additional design work beyond the limited, "pre-design" scope were needed to refine the project features.

The agreement with PDC, as proposed for implementation by City staff, allows the necessary discretion and flexibility to determine the level of project design that will produce a

project description to allow the appropriate environmental review to be conducted for this unique and complex project.

A handwritten signature in black ink, appearing to read 'R. Haas', with a stylized, flowing script.

R.F. Haas  
Deputy Chief Operating Officer of Public Works

RF/dz

cc: Mayor Jerry Sanders.  
Jamie Bradford, Director of Council Affairs, Mayor's Office  
Dave Jarrell, Interim Director, Engineering & Capital Projects  
Dave Zoumaras, Deputy Director, Engineering & Capital Projects  
Marnell Gibson, Deputy Director, Engineering & Capital Projects

Office of  
The City Attorney  
City of San Diego

MEMORANDUM  
MS 59

(619) 236-6220

DATE: July 24, 2007  
TO: Honorable Mayor and City Council Members  
FROM: City Attorney  
SUBJECT: Proposed Contract for Design and Environmental Work on the  
Regents Road Bridge

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INTRODUCTION

This office has received a copy of a memorandum to you, dated July 13, 2007, from Kevin Sullivan, Esq. Mr. Sullivan serves as outside counsel to the City, under the direction of this office, in the matters of *Friends of Rose Canyon v. City of San Diego*, SDSC No. 871984 and *Las Palmas Condominium Owners' Association et al. v. City of San Diego*, SDSC No. GIC 872000. Mr. Sullivan's memo addresses procurement and conflict of interest questions related to a proposed contract between the City and Project Design Consultants, Inc. [PDC] for the design and environmental analysis of a proposed bridge extending Regents Road over Rose Canyon in the University City Community.<sup>1</sup>

As you may recall, this Office opined on these same issues in the attached April 4, 2007 memo to you from Chief Deputy City Attorney Michael Calabrese, which concluded that:

1. the proposed contract, to the extent that it called for an environmental analysis, was outside the scope of the procurement procedures that had been used to hire PDC in 2003, and thus required a new consultant procurement process under CP 300-07 and A.R. 25.60;
2. the proposed contract would, because it would have extended the City's

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<sup>1</sup> Mr. Sullivan's memo was presented as a confidential attorney-client communication. We note that it was attached to a form CM-1472 that was routed to at least nine different city offices on July 20 and 23, 2007. This wide distribution may have effectively eliminated any privilege. However, because the Council has not explicitly waived the privilege as of the date of this memo, we will refrain from revealing the contents of Mr. Sullivan's memo in this memo, in order to preserve any privilege that may remain.

contractual relationship beyond five years from the previous date of hire on this project, require adoption by an ordinance receiving six votes on the Council, per the requirements of section 99 of the City Charter; and

3. the proposed contract could not be awarded to PDC in any event, because it would result in violations of Sections 1090 and 87100 of the California Government Code, which respectively prohibit government officials, including consultants, from:
  - a. participating in the making of contracts in which they have a financial interest; and
  - b. participating in the making of government decisions in which they have a financial interest

These latter conclusions are based, in essence, upon the fact that PDC was employed to perform a preliminary analysis of various alternatives for traffic flow improvements in University City, and that this analysis was presented to the Council to influence its deliberations as to which alternative should be designed and built – with PDC fully expecting to receive the resulting design contract. Thus, PDC had both participated in the shaping of its own resultant contract and influenced the governmental decision to design and build the Regents Road Bridge, from which decision it stood to profit substantially through the expected follow-on contract.

Mr. Sullivan's memo discusses these conclusions. Initially, then, I should note that it is the function of the City Attorney, pursuant to section 40 of the City Charter, to serve as the City's "chief legal advisor." To the extent that outside counsel is employed to meet the City's legal needs, the City's relationship with such counsel is under the direction of the City Attorney. Neither the Council nor City Staff, including the Mayor's staff, should purport to direct the work of outside counsel except in cooperation and consultation with the City Attorney's Office. Nor should outside counsel be employed for the purpose of seeking a different opinion when the opinion of the City Attorney's Office is not to the Staff's or the Council's liking.

Nonetheless, in order to ensure that the Council has the benefit of complete legal analysis, we will here supplement our earlier memorandum on these questions.

**QUESTION PRESENTED**

Has the City Attorney's opinion regarding the lawfulness of a proposed contract between the City and PDC changed in light of Mr. Sullivan's memo?

**SHORT ANSWER**

No. Mr. Sullivan's memo did not address key facts that formed the basis of the City Attorney's April 4, 2007 memo. Because of this, after careful consideration of the analysis that Mr. Sullivan has offered, we have concluded that our original analysis remains valid, and that the proposed contract with PDC cannot be entered because it would result in violations of both section 1090 and section 87100.

**ANALYSIS**

We have reviewed Mr. Sullivan's analysis, and found it most helpful in performing our mandatory duty to ensure that all City contracts are in compliance with all applicable laws, including Sections 1090 and 87100. We note here that, while the City Attorney may consider the input of outside counsel on such questions, and we have done so here, the Charter places the responsibility for ensuring the legality of contracts with this Office; it cannot be delegated to outside counsel. After considering Mr. Sullivan's reasoning and conclusions with respect to Sections 1090 and 87100, we reiterate our original conclusion that the proposed contract, even if altered to omit environmental work, would violate these statutes.

**I. No Intervening Review of the Consultants' Work by City Staff Occurred with Respect to the Consultants' Presentations at the August 1, 2006 Council Meeting.**

Our April 4, 2007 memo mentioned in a footnote that it is legally possible that, in the case of a possible violation of section 87100, a violation might be eliminated if City Staff were to engage in "significant intervening substantive review" after the consultant gave its input to the governmental decision in question. However, we noted that such subsequent review had not occurred in this case – i.e., that City Staff had not performed an intervening review of the consultants' work such that any violation would be eliminated.

It should be noted here that, in addition to preparing the Environmental Impact Report [EIR] that the City Council certified on August 1, 2006, PDC and two of its subconsultants also interacted directly and extensively with the Council itself at the August 1, 2006 Council meeting, preparing and narrating a multi-media presentation that advocated the selection of the Regents

Road Bridge alternative.<sup>2</sup> It was primarily this presentation with which our April 4, 2007 analysis was concerned. Whatever "significant intervening substantive review" may have occurred as to the EIR itself, the selection of the Regents Road Bridge was an independent action. It was this action – not the certification of the EIR – in which the consultants' had a financial interest, specifically, their expected follow-on contract, the scope of which would be determined by the Council's choice among alternatives. Thus, it was the selection of the preferred alternative – not the certification of the EIR – that gave rise to violations of sections 87100 and 1090.

We have extensively reviewed the video archive of the August 1, 2006 City Council meeting. Although City Staff was present and also participated in this discussion, that participation cannot be construed as "significant intervening substantive review" of PDC's presentation, since the consultants were speaking directly to the Council at the very meeting at which the decision in question was made. Other factors, including presentations by the Mayor and City Staff, undoubtedly also influenced the Council's action. But there can be no question that the purpose of PDC's participation in the meeting was to influence the Council's decision to select the Regents Road Bridge alternative, and in turn to shape the content of the contract that PDC fully expected to receive as a result of that Council decision.

## **II. There is No Doctrine of Intervening Review Under Section 1090.**

We should also note here that, whatever may be the outcome of a thorough consideration of the question of "significant intervening substantive review" under section 87100, this inquiry has no application to the question of whether a proposed contract with PDC would violate section 1090. The concept of significant intervening substantive review arises from regulations promulgated under section 87100, specifically 2 Cal Code Regs section 18702.2(b). There is no corresponding regulation under section 1090. Further, the California Court of Appeals has held that the regulations implementing section 87100 may not be applied to questions under section 1090. *People v. Anguay*, 2002 WL 31124730, \*7 (unpublished opinion citing *People v. Honig*, 48 Cal. App. 4th 289, 325-29, and fn. 15 (1996)). Thus, even if it were possible to find that PDC's contribution to the making of the "governmental decision" to build the Regents Road Bridge had been cleansed of any possible violation of section 87100 by significant intervening substantive review, it is not possible to draw this same conclusion under section 1090. The doctrine simply does not exist in that context.

## **CONCLUSION**

The doctrine of "significant intervening substantive review" cannot be invoked to eliminate the potential violations of sections 1090 and 87100 identified in our April 4, 2007

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<sup>2</sup> The EIR itself explicitly expressed no preference among the alternatives considered. However, a review of video archive of the consultants' presentations to Council makes clear that, at least with respect to their participation in that meeting, they advocated for the Regents Road Bridge alternative.

July 24, 2007

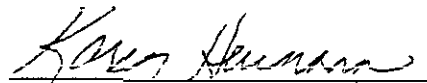
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Page 1

memo. Under section 87100, the doctrine does not change the result because PDC and two of its subconsultants participated personally and substantially not only in the preparation of the EIR, but also in the hearing at which the Council made the decision to select the Regents Road Bridge as the preferred alternative. Their presentations at this hearing were not subject to significant intervening substantive review, since they were made, verbally and through the use of visual aids, directly to the Councilmembers who were, at that hearing, considering the very governmental decision in question. Moreover, the doctrine has no application in the context of a possible section 1090 violation.

Given these facts, while we have found Mr. Sullivan's thoughtful analysis enlightening, we remain convinced that any contract awarding PDC the task of designing the Regents Road Bridge would be unlawful. We will not approve such a contract as to form and legality, as Section 40 of the City Charter would require in order for any such contract to be valid.

MICHAEL J. AGUIRRE, City Attorney

By



Karen Heumann

Assistant City Attorney

KH:mpc

cc: Patti Boekamp, Engineering & Capital Projects Department

ATTORNEY TO CLIENT  
CORRESPONDENCE

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Office of  
The City Attorney  
City of San DiegoMEMORANDUM  
MS 59

(619) 236-6220

**DATE:** July 13, 2007

**TO:** Honorable Mayor and City Council

**FROM:** Kevin P. Sullivan and William J. Schwartz, Special Counsel

**SUBJECT:** *Friends of Rose Canyon et al v. City of San Diego*  
SDSC No. 871984  
*Las Palmas Condominium Owners' Association et al v. City of San Diego*  
SDSC No. GIC 872000.

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**PURPOSE:** Consider additional information and provide further analysis about potential contract procurement and conflict of interest issues relating to the proposed contract for design and environmental review for potential implementation of the Regents Road Bridge alternative.

**COUNCIL DISTRICT:** 1

1. **INTRODUCTION**

Kevin Sullivan provides this memorandum to evaluate the impact of additional information and authority relating to possible contract procurement and conflict of interest issues about the proposed Fee Agreement for Regents Road Bridge and Limited Roadway Changes between the City of San Diego and Project Design Consultants.

As explained more below, the proposed Fee Agreement for Regents Road Bridge and Limited Roadway Changes between the City of San Diego and Project Design Consultants (Phase II Contract) should be modified to remove discussion and scope of work items for any project-level Environmental Impact Report for the project. Any such environmental review would be subject of a separate contract procurement process.



Further, significant information about preparation of environmental review documents appears not to have been available for the Memorandum on the Proposed Contract for Design and Environmental Work on the Regents Road Bridge. That Memorandum was presented to the Mayor and City Council Members on April 4, 2007. Based on the additional information discussed below, the concern stated in the Memorandum about a potential conflict of interest regarding the Phase II Contract with PDC should be avoided pursuant to applicable law. The same potential conflict of interest concern would also be eliminated as to any separate contract that would be awarded for environmental review relating to the Phase II work.

Finally, approval of a revised Phase II Contract with PDC could be accomplished by adoption of an ordinance by six votes of the City Council.

## 2. **BRIEF BACKGROUND**

The City's Engineering and Capital Projects Department (ECP) issued a request for qualification (RFQ) in 2002 for architecture-engineering consultants to perform certain work related to the University City North/South Transportation Corridor Study. The purpose of the project was to identify options and alternatives to improve traffic, pedestrian and bicycle circulation in the North University City area.

The General Description and Scope of Services for the RFQ identified two phases for the work. Phase I included the preparation of "all CEQA documents for the proposed project ...." as well as preliminary engineering design of the proposed work as needed to support the proposed environmental document. (Emphasis supplied). Under the RFQ, Phase II was to include final design plans, specification and engineers' estimate.

Following the review of RFQ submittals from nine firms, the City selected Project Design Consultants (PDC) to perform the work on the project. A "Phase I" contract with PDC was approved by the City Council in April 2003. The Phase I Contract with PDC did not discuss the scope of any environmental review or engineering analysis and design work that could be performed in the Phase II portion of the project.

PDC's work under the Phase I Contract was directed by the City ECP. (Phase I Contract, p. 1; 1<sup>st</sup> Amendment to the Phase I Contract, p.1). In addition to having its work directed by the ECP Department, all draft reports and technical studies for the University City North/South Transportation Corridor Study Environmental Impact Report (EIR) were reviewed and analyzed multiple times by City Development Services Department (DSD) staff, which performed independent review of the materials. Consequently, the City DSD and ECP Departments controlled the final text and analysis of the EIR.

The EIR for the University City North/South Transportation Corridor Study was presented to the City Council on August 1, 2006. Seven separate project alternatives were contained in the Final EIR, in addition to a "No Project" alternative. (Administrative Record ("AR") pp. 3293-3323). The Final EIR did not identify or suggest any preferred alternative, but evaluated each one equally. (See, e.g., AR pp. 3214-3215, 3288, 9798 and 9975). In fact, the

Final EIR stated that it "makes no recommendation on which changes [in the University City transportation infrastructure] should be undertaken." (AR, p. 3288).

Following an August 1, 2006, public hearing, the City Council certified the Final EIR and directed that the Regents Road Bridge Alternative be implemented. As clarified by the City Council on March 27, 2007, implementation of the Regents Road Bridge Alternative would occur only upon completion and certification of a project-level EIR for that alternative.

In about December 2006, City Staff presented to the City Council the Phase II Contract with PDC. The scope of work in the Phase II Contract included final engineering design for the selected alternative, and preparation of a project-level EIR for the project as required under the California Environmental Quality Act (CEQA). Since December, PDC sold its environmental Planning Group to Helix Environmental Planning Services, Inc. (Helix). The Phase II Contract with PDC was then revised to provide that Helix would be a subconsultant for purposes of completing the CEQA work for Phase II.

In April 2007, a Memorandum regarding the Proposed Contract for Design and Environmental Work on the Regents Road Bridge was presented to the Mayor and the City Council. The Memorandum raised some questions about the procurement process and possible conflicts of interest relating to the Phase I and Phase II Contracts. As discussed more below, some additional information relevant to those questions was not available when the Memorandum was prepared. This document further analyzes the matters raised in the Memorandum based on that additional information.

### **3. LEGAL ANALYSIS**

#### **A. The Environmental Review Work For Implementation Of The Regents Road Bridge Alternative Could Be Procured Through A Separate RFQ Process.**

Under City Council Policy 300-07 and Administrative Regulation 25.60 (§ 8.1.3), engineering consultants (and subconsultants) must be selected through a published RFQ involving expenditures in excess of \$250,000. The RFQ for the Phase I Contract did not state that any environmental review would be performed in Phase II of the project. City Policy and regulations appear to require that the proposed work for the project-level EIR for the Regents Road Bridge alternative should be procured through a separate RFQ process.<sup>1</sup> That scope of work could therefore be removed from the proposed Phase II Contract, and the work awarded pursuant to City regulations.

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<sup>1</sup> No terms of Council Policy 300-07 or Administrative Regulation section 25.60, however, expressly limit the scope of a consulting contract based on a description of the work found in a RFQ. Further, Administrative Regulation (AR) section 25.60(11) provides that the failure of a City employee or department to comply with the AR shall "in no way affect the validity of any A&E Consultant contract entered into between the successful A&E Consultant and the City."

**B. A Potential Conflict of Interest Under Government Code Section 87100 *et seq.*, Regarding The Phase II Contract Appears To Have Been Avoided By The City's Significant And Substantive Independent Review Of The EIR Materials.**

Representatives of PDC would be viewed as "public officials" even relating to their temporary consulting work for the Phase I Contract. Further, PDC and Helix representatives would be deemed public officials relating to any Phase II Contract consulting work for the Regents Road Bridge alternative. As such, they would be subject to the conflict of interest rules under Government Code section 87100 *et seq.* Those rules prevent a public official from making, participating in or influencing a governmental decision in which the official or employee knows or should know that it has a financial interest. Gov. Code section 87100. (City Municipal Code section 27.3561 essentially codifies section 87100).

But a public official or employee is not deemed to have made, participated in or influenced a government decision where there is "significant intervening substantive review" of the employee's reports, analyses or opinions. 2 Cal Code Regs section 18702.2(b)(1)-(2). The California Fair Political Commission has determined that if significant intervening substantive review of the consultants' recommendations or work is performed "by the governmental agency," then the employees of the consulting firm "would not be participating in a government decision." *In re Nelson, FPPC Inf. Adv. Ltr.* I-91-437 \*16 (Oct. 29, 1991) (Emphasis supplied). In *In re Nelson*, the Commission recognized that substantive review of the consultant's work by a competent expert outside of the consultant's firm will effectively filter the recommendations for the governing board, and "eliminate the possibility of a conflict." *Id.*, at \*16-17.

The following facts, which appear not to have been available for the April 4, 2007 Memorandum, describe some significant intervening substantive review and other matters that insulate PDC's Phase I Contract work from a potential conflict of interest claim under section 87100<sup>2</sup>:

- PDC's work was directed and controlled by the City's ECP. PDC's Phase I Contract stated that the consulting services would be performed under the direction of the ECP. (Phase I Contract, p. 1; 1<sup>st</sup> Amendment to the Phase I Contract, p.1).
- Once ECP and PDC coordinated to prepare work product on the draft EIR under the Phase I Contract scope of work, such materials were presented to and reviewed by City DSD representatives.
- City DSD representatives with applicable subject matter expertise performed multiple reviews of each technical study for the EIR. The DSD technical experts independently vetted the analysis and information contained in all technical reports for the EIR. The technical studies were required to meet DSD's independent

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<sup>2</sup> Absent these layers of intervening independent review and other case-specific circumstances, which are unique to the CEQA context, a prohibited conflict of interest could arise from the consultants' participation in the preparation of the subject EIR.

standards as to subject matter and methodology. The series of reviews resulted in required changes, modifications and amendments to the technical studies for the EIR.

- City DSD representatives with applicable subject matter expertise performed separate reviews of at least three (3) iterations of the draft EIR text before the EIR was considered by the Council. The DSD technical experts independently vetted the analysis and information contained in the draft EIR versions. The EIR screencheck drafts were required to meet DSD's independent standards as to subject matter and methodology. The series of reviews resulted in required changes, modifications and amendments to the draft EIR text.
- The Final EIR "was prepared by the Environmental Analysis Section of the City of San Diego Land Development Review Division." (AR, p. 3678).
- CEQA Guidelines section 15084(e) states that before using a draft EIR prepared by another entity, the lead agency (here, the City) "shall subject the draft to the agency's own review and analysis. The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency. The lead agency is responsible for the adequacy and objectivity of the draft EIR."
- CEQA Guidelines section 15090 states that, before certifying a Final EIR, the agency shall certify that: "The final EIR reflects the lead agency's independent judgment and analysis." Such a certification was contained in the Resolution approving the Final EIR here. (AR 004 and 9794).
- The official duties under CEQA for the City independently to review and analyze the information in the Final EIR are presumed under California law to have been regularly performed. California Evidence Code section 664.
- The Final EIR was circulated for public review, including to state agencies, and was the subject of hundreds of comments letters, containing thousands of comments. The comments were received from other public agencies, from private organizations (including some representatives with technical expertise), and from private citizens. (AR, pp. 2948-2951, 2993, and 9798). The purpose of such public agency and other review of the Final EIR is to check for accuracy and detect omissions. CEQA Guidelines section 15200.
- The Final EIR did not identify or suggest any preferred alternative, but evaluated each one equally. (See, e.g., AR pp. 3214-3215, 3288, 3293-3321, 9798 and 9975). In fact, the Final EIR stated that it "makes no recommendation on which changes [in the University City transportation infrastructure] should be undertaken." (AR, p. 3288).
- The Final EIR also contained a "No Project" alternative, which could have been selected by the Council on August 1, 2006. (AR 3215, 3321-3323).

- The Mayor recommended that the Regents Road Bridge alternative be selected by the Council. (AR, p. 9794).
- The Mayor's primary reasons for recommending the Regents Road Bridge alternative related to reduced fire and paramedic response times, as well as improved emergency access. (AR, pp. 9794-9795. These are social and public safety considerations that were not even addressed in the Final EIR's analysis of environmental impacts. (See *e.g.*, AR pp. 3213-3679).
- The Mayor personally toured the affected areas of University City North and investigated the circumstances of traffic circulation issues before making his recommendation. (AR, p. 9965) His comments at the August 1, 2006, public hearing on the Final EIR make clear that his recommendation of the Regents Road Bridge alternative was primarily based on public safety and social issues. (AR, p. 9965).
- The Mayor's recommendation was also based, at least in part, on independent reports from Fire Chief Jarman and Police Chief Lansdowne. (AR, pp. 9795, 9885 and 9965).
- Fire Chief Jarman prepared a separate, independent memorandum that analyzed the improved fire and paramedic response times from the Regents Road Bridge alternative. (AR, pp. 9795, 9885, 9988-9990) That memorandum was relied on by Mayor Sanders in his recommendation to the Council. (AR, p. 9795).
- Police Chief Lansdowne separately reviewed and analyzed police response time issues in recommending selection of the Regent Road Bridge alternative. (AR, pp. 9990-9991). Such public safety issues were not analyzed in the Final EIR.

Based on the totality of these circumstances, no conflict of interest would likely be found relating to the consultants' potential to influence the award or scope of the Phase II Contract. The City ECP directed and controlled PDC's Phase I Contract work, the City ECP Department and technical experts at City DSD performed significant intervening substantive review of the PDC's work product as required by law, other public agency and public review of the EIR occurred, the City exercised independent oversight and analysis of the EIR as required by CEQA, PDC did not recommend any alternative or course of action in the EIR, the City could have chosen the "No Project" alternative from the EIR (which would have eliminated any Phase II work on the matter), and the Mayor primarily relied on non-EIR issues such as public safety and social considerations in recommending selection of an alternative contained in the EIR. Accordingly, a potential conflict of interest by PDC (or current members of Helix Environmental) relating to the Phase II work should not be found to exist under Government Code section 87100.

**C. The City's Significant And Substantive Independent Review Of The EIR Materials Should Have Avoided A Potential For A Conflict of Interest Regarding The Phase II Contract Under Government Code Section 1090 *et seq.***

Government Code section 1090 *et seq.*, states that City officials and employees shall not be financially interested in contracts made by them. The prohibition has been extended beyond matters of an actual vote on a contract, and apply as well to an official's or employee's participation in preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications and solicitations for bids for the purpose of making a contract. See *Stigall v. City of Taft* (1962) 58 Cal 2d 565, 569 (councilmember was owner of a plumbing company that was awarded a contract by the City just after the Councilmember resigned from office).

The purpose of 1090 is to "remove or limit the *possibility* of any personal influence, either directly or indirectly which might bear on the official's decision ...." *Stigall v. Taft, supra*, 58 Cal 2d at 569. (Emphasis original). Where the employee does not participate personally in the execution of the contract, a conflict exists only if it is established that the employee had "the opportunity to, and did, influence execution directly or indirectly to promote his personal interests." *People v. Sobel* (1984) 40 Cal. App 3d 1046, 1052. (Emphasis supplied).

Under applicable authority, representatives of PDC would be viewed as "employees" of the City relating to their temporary consulting work for the Phase I Contract. Further, PDC and Helix representatives would be deemed City employees relating to any Phase II Contract consulting work for the Regents Road Bridge alternative. As such, they would be subject to the conflict of interest rules under Government Code section 1090 *et seq.* (City Municipal Code section 27.3560 codifies section 1090).

As identified in the new information discussed in Part 2B above, PDC's participation in the preparation of the EIR was uniquely subject to substantial independent review by qualified subject matter experts at DSD and the City generally. The City exercised its independent judgment and analysis in certifying the information contained in the EIR as required by CEQA. In addition, PDC did not make any recommendations with respect to any alternatives contained in the EIR. These additional facts appear to negate any potential or capability that PDC might unduly influence decisions relating to the selection of alternatives discussed in the EIR.<sup>3</sup>

In essence, the potential or opportunity for a conflict of interest by PDC is too remote and speculative under the totality of the circumstances applicable here. "Where the interest is remote and speculative, no conflict of interest is held to be presented under the statute." *Breakzone v. City of Torrance* (2000) 81 Cal. App. 4<sup>th</sup> 1205, 1230 (no section 1090 violations due to campaign contributions to council members who voted in favor of donor's alleged interest in a

<sup>3</sup> While the potential for a conflict of interest appears to have been avoided on these case-specific facts, there is some question about whether the PDC representatives participated in the "making" of the Phase II Contract while they were a City employee. PDC's scope of work under the Phase I Contract would have been completed on about August 1, 2006, when the City certified the EIR. No allegation is made that PDC's representatives continued to be an employee when the Phase II Contract was presented to the City Council in December 2006 or beyond.

land use application). The alleged interest is similar to that of the council member in *Hotchkiss v. Moran* (1930) 109 Cal. App. 321, 323, whose good relationship with his employer could have depended on how he voted on or considered a contract in which the employer's major shareholder had an interest. But no conflict was found by the court.

Likewise, the opportunity by PDC in this case to influence City actions for its financial benefit was too remote and speculative given the intervening and independent review exercised over PDC's work product as required by law. That review by the City should be seen to negate the potential conflict of interest.

**D. The Phase II Contract Could Be Approved By Ordinance To Comply With Any Applicable Provisions Of City Charter Section 99.**

City Charter section 99 states that the City may not enter into a contract extending for a period of more than 5 years except by an ordinance adopted with six or more votes. Approval of the Phase II Contract could be viewed as a continuation of the 2003 Phase I project. Because the reasonable potential for a conflict of interest on the Phase II work was vitiated by the intervening significant independent substantive review of qualified City staff and by other circumstances discussed above, then the proposed Phase II Contract (as modified to address only engineering consulting work) could be approved as an ordinance with the requisite number of Council votes.<sup>4</sup>

**4. RECOMMENDATIONS**

- Revise the Phase II Contract to remove any scope of work relating to preparation of a project-level EIR for the Regents Road Bridge alternative, and award that work under a separate RFQ process.
- Consider approving the revised Phase II Contract by an ordinance with a two-thirds majority vote of the Council.

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<sup>4</sup> Approval of the Phase II Contract by ordinance and super majority vote is not necessarily required. The Phase II Contract has a separate and distinct purpose and scope of work from the Phase I Contract. Also, the Phase II Contract will receive separate approval from the City Council at a different public hearing, as well as receive separate funding allocation from the Phase I agreement. Consequently, the Phase II Contract does not appear to be a continuation of the Phase I Contract, but rather a new agreement. Nor does the Phase II Contract state or imply that its scope of work will last longer than five (5) years.

Moreover, the bulk of the City Charter section 99 regulations appear to be modeled after Section 18(a) of Article 16 of the California Constitution. That Section prohibits a government entity from incurring indebtedness in any calendar year that exceeds the income or revenue for that year, unless the indebtedness is approved by a two-thirds vote of the voters of the public agency. Here, the Phase II Contract is fully funded from various City accounts that contain deposited Facility Benefit Assessment fees paid by developers relating to projects within the North University City area. No City General Fund revenue will be used to pay for the Phase II Contract work. Given the existence of full funding for work under the agreement from non-General Fund sources, there is some uncertainty about whether City Charter section 99 would apply in this circumstance.

Office of  
The City Attorney  
City of San Diego

MEMORANDUM  
MS 59

(619) 236-6220

DATE: April 4, 2007  
TO: Honorable Mayor and City Council Members  
FROM: City Attorney  
SUBJECT: Proposed Contract for Design and Environmental Work on the  
Regents Road Bridge

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**INTRODUCTION**

The City's Engineering and Capital Projects Department [E&CP] has proposed a contract under which Project Design Consultants [PDC] would perform final design work and prepare California Environmental Quality Act [CEQA] documentation for the proposed Regents Road Bridge in University City. The proposed contract requires City Council approval. In 2003, PDC was awarded a contract to study alternatives for relieving traffic congestion in the area and performing CEQA analysis of these alternatives [Phase I]. No pre-determined preference among alternatives was stated at the outset of that earlier study. As a result of that study, the Mayor and Council decided to pursue construction of the Regents Road Bridge. This will require project-specific design and environmental work [Phase II]. No further competitive selection process was followed to choose a consultant to perform this later design and environmental work. Rather, E&CP has proposed PDC as the contractor on the basis of its having performed the earlier study that led to the selection of the Regents Road Bridge alternative.

Several questions have arisen regarding the legality of the proposed Phase II contract, including whether the proper procurement processes have been followed, whether the proposed form of Council approval is adequate, and whether the proposed contract would result in a violation of certain conflict of interest provisions of the California Government Code and San Diego Municipal Code.

**QUESTIONS PRESENTED**

1. Is the work being assigned to PDC in the proposed Phase II contract within the scope of work that was defined in the 2002/2003 procurement process, such that the Phase II contract may be justified on the basis of the 2002/2003 procurement process?



2. Is PDC precluded from being awarded the contract to design and perform CEQA analysis for the proposed Regents Road Bridge because of its involvement in the selection of that bridge as the preferred choice from among alternatives?

### SHORT ANSWERS

1. No. Because the currently contemplated project-level Environmental Impact Report [EIR] was not part of the original procurement, a new procurement process is needed for that EIR.
2. Yes. Because PDC played a central role in the process by which the Regents Road Bridge was selected as the preferred alternative, it may not now be awarded a resulting contract to design that bridge and perform related environmental work.

### BACKGROUND

In 2002, the City, through E&CP, issued a request for qualifications [RFQ] for Architecture-Engineering consultants to perform specified work related to the "University City North/South Transportation Corridor." The general purpose of the project was to study alternatives for improving traffic flow between the northern and southern portions of the University City community. The "General Description and Scope of Services" divided the requested work into two phases, as follows:

Phase I includes the preparation of *all CEQA documentation for the proposed project*. The environmental document and associated technical studies must equally evaluate the following combinations or work associated with the proposed North/South Transportation Corridor Project: Regents Road Bridge only, Genesee Avenue widening only, both Regents Road Bridge and Genesee Avenue widening, and no project alternative. The Phase I scope also includes the *preliminary design of the proposed work to the level required to support the proposed environmental document*. Phase II includes final design plans, specifications and engineers estimate (PS&E package). (Emphasis added.)

The deadline for submittals in response to this RFQ was July 15, 2002. Originally, fees were estimated at \$500,000 for Phase I and would "not exceed \$1,500,000" for Phase II.

Under normal circumstances, the City selects a consultant with reference to a specific project. It is not uncommon for such consulting services to be "segmented" into different phases, as was the case here. The segments are commonly awarded to the same firm but performed in a logical sequence. While preliminary engineering and environmental analysis are

often combined even for complex projects like the building of a bridge, final detailed design is commonly deferred to a later segment, since it cannot proceed until final environmental clearance has been received. *See* Caltrans Local Assistance Procedures Manual, p. 10-6 (May 1, 2006). Thus, there would be nothing fundamentally problematic about the selection of a consultant to perform both preliminary engineering work and an environmental assessment of a specific, identified project and then, in a later segment, perform final design work for that project.

However, this project has not fit that pattern. Rather, the first phase of the work did not call for preliminary engineering work and environmental assessment of a specific project, but instead called for a study of several alternative projects, with none initially identified as the preferred alternative. And because there was no preferred project at the outset, no project-level EIR was called for at the time. City staff has stated that it was their intent, and would have been understood by all potential consultants, that a project-level EIR would be needed after a preferred alternative was selected, but this was not specified in the RFQ. Rather, according to City staff, it was contemplated that this need, though anticipated from the outset, would be addressed later, when the necessary selection of a preferred alternative had been made. Whether a new consultant selection process would be needed at this later stage was apparently not considered at the time. However, although City staff reports that it was always anticipated project-level CEQA analysis would be needed, and this project-level CEQA analysis therefore presumably could have been included in the Phase II scope of work as crafted in 2002, it was not included.

After submittals from nine different firms, the City chose PDC to do the work described above. A contract with PDC (the "Phase I Contract")<sup>1</sup> was approved by City Council Resolution R-297850 on April 21, 2003. It was then executed by the City and PDC, and approved by the City Attorney's office on April 24, 2003. Among other things, the Phase I Contract called for (during "Funding Phase II" thereof) the preparation of a "First Screencheck", "Second Screencheck," "Third Screencheck," "Draft," and "Final" EIR. This EIR would cover the "four primary alternatives equally," and also address "any other alternatives identified" during "Funding Phase I" of the Phase I Contract.

Significantly, both the RFQ and the Phase I Contract explicitly contemplated that the preparation of "all CEQA environmental documentation" would be performed in Phase I. For this reason, the level of "preliminary design of the proposed work" for the various alternatives was, according to the RFQ, to have been sufficiently detailed "to support the proposed environmental document." The initial portion of the Phase I Contract (i.e., "Funding Phase I")

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<sup>1</sup> Although the Phase I Contract covered two "Funding Phases," called Phase I and Phase II, these funding phases should not be confused with the Phase I and Phase II called for in the RFQ. The Phase I Contract, in its Scope of Work, corresponded to the RFQ's description of Phase I. However, the total funding for the Phase I Contract, originally estimated in the RFQ at \$500,000, had by the time of the Phase I Contract's execution, less than a year later, more than tripled to \$1,563,250.

was largely devoted to such preliminary design, and thus included the plotting of utilities, mapping, geotechnical studies, two "Advance Planning Studies" for the Regents Road Bridge Alternative, planning level construction cost estimates, and a Constraints Report for up to six alternatives. Nothing in either the RFQ or the resulting Phase I Contract suggested that any CEQA work was to be done in Phase II; to the contrary, the explicit language of these documents says that "all CEQA environmental documentation" was to be completed in Phase I. Phase II was, from the outset of the project, to have been for the "final design plans, specifications and engineers estimate."

City staff has stated that it always intended that further environmental work would be done once a preferred alternative was identified. And indeed, it would have been reasonable to have expected that, once a specific project was selected, a project-level CEQA document would be needed. Nonetheless, no such work was identified in any of the procurement documentation at the time.

PDC, in cooperation with both its subconsultants and City staff, presented its Phase I EIR to the City Council on August 1, 2006. As a result of that presentation, in combination with a recommendation by the Mayor, the Council both certified the EIR<sup>2</sup> and selected, from the alternatives studied, the Regents Road Bridge alternative. See San Diego Resolution No. R-301787.<sup>3</sup>

Following that hearing, City staff entered into negotiations with PDC for a new proposed contract (the "Phase II Contract"), which was finalized for presentation to the Council in approximately December of 2006. It included not only final design of the alternative selected by the Council – the Regents Road Bridge – but also preparation of a new EIR. Of the \$5.78 million Phase II Contract total (up from the original 2002 estimate of \$1,500,000), there is included \$1,157,163.85 in "CEQA and Permit Processing" costs. Approval of this contract awaits Council action.

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<sup>2</sup> That certification was a matter of some controversy around the time of the August 1, 2006 Council hearing and thereafter, as there arose questions as to whether the EIR was a "project EIR," which "examines the environmental impacts of a specific development project" or a "program EIR," which "may be prepared on a series of actions that can be characterized as one large project and are related" in various ways. *Sierra Club v. County of Sonoma*, 6 Cal. App. 4th 1307, 1315-16 (1992). *This memo does not address the question of which of these types of EIRs was required or performed as a result of the Phase I Contract, which is the subject of ongoing litigation.* The significant fact, for the purposes of the questions addressed here, is that City staff stated at the August 1, 2006 hearing that, despite the fact that the RFQ and Phase I Contract had not been explicit in identifying the need for a CEQA aspect to Phase II (and in fact contained language that seemed to exclude the possibility), further environmental work was, in fact, needed to move forward with the Regents Road Bridge alternative.

<sup>3</sup> The Council's August 1, 2006 action has been altered to some degree by its March 27, 2006 action, which clarified that the selection of the Regent's Road Bridge as the preferred alternative would be contingent upon completion and certification of a project-level EIR.

The Phase II Contract as proposed calls for CEQA work by PDC itself, as well as by four subconsultants. However, PDC has recently sold its environmental planning group to Helix Environmental Planning, Inc., which was never previously involved in any phase of the project, in any capacity, either as a consultant or as a subconsultant. PDC remains in business and intends to perform the non-environmental aspects of the Phase II Contract. However, as PDC no longer employs environmental planning personnel, it now proposes to subcontract this work to Helix.

### ANALYSIS

**I. The Environmental Work Called for in the Phase II Contract was not Subject to any Competitive Procurement Process, and the Proposed Contract, as it Relates to that Environmental Work, Would Violate Council Policy 300-07 and Administrative Regulation 25.60.**

As a general rule, the selection of consultants is not subject to the same competitive procurement requirements as most City procurement. While most purchases of goods and services must be conducted pursuant to competitive processes spelled out in San Diego Municipal Code [SDMC] section 22.3212, consultant contracts are excluded from these requirements. See SDMC section 22.3003 (defining "contract for services" to exclude consultant services).

However, the selection of consultants, though generally exempt from the Municipal Code's competitive procurement provisions,<sup>4</sup> is subject to both Council Policy [CP] 300-07 and Administrative Regulation [A.R.] 25.60 (specific to architecture and engineering consultants). Under CP 300-07, such consultants must be selected on the basis of a published RFQ.<sup>5</sup> See CP 300-07, § A.2; A.R. 25.60, § 8.1.3 (requiring publishing for the selection of a consultant to perform "any specific contract for an expenditure in excess of \$250,000.") At least three consultants must be considered, and the "highest qualified person" must be selected, with the basis for that selection spelled out in detail where Council approval is, as here, required. See CP 300-07, §§ A.3 and B.1. A fair price is then negotiated with the selected consultant. Price is not normally a selection criterion, coming into play only if, in the City's judgment, a fair price cannot be negotiated.

As noted, the Phase I Contract was awarded pursuant to a published RFQ, whose propriety, at least as to the Phase I work, is not within the scope of this memo. If the proposed

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<sup>4</sup> The Municipal Code does specify that consultant selection must be approved by the City Council where the contract in question, or any combination of contracts for the same consultant in a given fiscal year, exceeds, \$250,000: SDMC § 22.3223.

<sup>5</sup> This requirement is subject to certain minimum dollar thresholds that are far exceeded here.

Phase II contract, then, can be viewed as merely an extension of that award, it might be seen as being in compliance with CP 300-07 and A.R. 25.60.

However, this is not the case. The RFQ and the Phase I Contract very explicitly stated that "all CEQA environmental documentation" would be performed during Phase I.<sup>6</sup> Because the environmental work that was awarded as part of Phase I was completed, and no environmental work was called out as part of Phase II, a separate award process is required at least for the environmental aspect of Phase II. And, because the proposed cost of the work (per the Phase II Contract) would exceed \$250,000, it would need to be awarded pursuant to published notice and approved by City Council. See CP 300-07; A.R. 25.60; SDMC section 22.3223.<sup>7</sup> While a project-level EIR might have been called for in Phase II, under normal "segmenting" of consultant work, this was not done. These services must be procured anew.

Because the environmental portion of the Phase II work cannot be considered part of the Phase II scope of work and awarded to PDC on that basis in any event, this memo need not reach the question of whether Helix, having acquired PDC's environmental planning group, could stand in PDC's place at the outset of the Phase II Contract.

## **II. The Proposed Phase II Contract Would Result in Violations of Sections 1090 and 87100 of the California Government Code.**

If the procurement issues discussed above were the only problems with the proposed contract approval, they might be cured by redrafting the Phase II Contract to exclude the environmental work, crafting an ordinance to approve the bridge design portion consistent with

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<sup>6</sup> As noted above, it has been suggested by City staff that, despite this unambiguous language, it would have been understood that further environmental work would likely be needed after Phase I was completed. Even if those reviewing the RFQ would have understood that more environmental work was likely to follow, however, the fact remains that the RFQ itself did not include environmental work in Phase II. It was unambiguous and cannot be amended by implication nearly four years after the fact.

<sup>7</sup> To the extent that the Phase II Contract can be justified as being within the scope of the 2002/2003 procurement process (i.e. for the bridge design work), another problem arises. The Phase II contract calls for services to be completed more than five years after the original April 24, 2003 Phase I contract date. Thus, if the Phase II contract were to be viewed as a continuation of the Phase I contract – which is the only conceivable justification for allowing it to go forward without a competitive selection process, it would violate City Charter section 99, which requires that City contracts involving obligations lasting more than five years be approved by an ordinance passed with six votes or more. No such ordinance has been presented; the document currently pending before the Council is a resolution.

This problem could be resolved by the drafting and docketing of such an ordinance, if it were the only problem. But as discussed below, the Phase II contract – in its entirety – also represents an unlawful conflict of interest, and this problem is not curable.

City Charter section 99, and separately procuring the environmental portion. However, there is a larger, more intractable problem. Any award of Phase II work to PDC would create a violation of two provisions of the California Government Code. Specifically, Government Code sections 1090 and 87100 both prohibit the proposed contract with PDC, or indeed any contract that would award to PDC the project-specific follow-on work that will flow from the City's selection of the Regents Road Bridge Alternative as the preferred alternative from among those studied in Phase I.<sup>8</sup>

#### A. Government Code §1090

Section 1090 of the Government Code is a codification of a pre-existing common law prohibition against self-dealing by government officials. See *Berka v. Woodward*, 125 Cal. 119, 122 (1899). Under §1090:

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.

This provision is construed broadly to effectuate the purpose of protecting the public against possible corruption in public officials. *Millbrae Ass'n for Residential Survival v. City of Millbrae*, 262 Cal. App. 2d 222, 237 (1968). Thus, it applies to "making" of contracts in a broad sense that includes "preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications and solicitation for bids." *Id.* Section 1090 has been held to apply not only to those who actually have the power to make contracts, but also to those who contribute to the process "merely in an advisory capacity." *Schaefer v. Berinstein*, 140 Cal. App. 2d 278, 291 (1956). Moreover, it has specifically been held to apply to consultants, when they advise government officials on matters of public policy. 46 Op. Cal. Att'y Gen. 74 (1965).

More important, a violation of section 1090 arises not from a public official's actual attempt to profit from the contract in question, but from the possibility that he might do so. The public has a right to demand "absolute, undivided allegiance" from such a person, and this expectation is violated "as effectively where the officer acts with a hope of personal financial gain as where he acts with certainty." *People v. Honig*, 48 Cal. App. 4th 289, 325 (1996). Actual bias or improper dealing is not required for a violation of section 1090. Where the person in question "had the opportunity to, and did influence the execution [of a contract] directly or indirectly to promote his personal interests," section 1090 is violated. *People v. Sobel*, 40 Cal. App. 3d 1046, 1052 (1974). An inquiry into motives is not part of the analysis. The courts recognize that "an impairment of judgment can occur in even the most well-meaning men," and section 1090 is "concerned what might have happened rather than merely what actually

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<sup>8</sup> In addition, sections 1090 and 87100 are, in substance, codified in the Municipal Code at sections 27.3560 and 27.3561, respectively. Thus, the analysis below regarding potential violations of state law yields the same conclusions under municipal law.

happened.” *People v. Gnass*, 101 Cal. App. 4th 1271, 1287 (2002). Thus, in this case, it is not relevant to inquire whether PDC actually performed its Phase I work in a manner that would have tended to lead to a more lucrative Phase II contract.<sup>9</sup> The question is whether it was in a position where it could have done so.

Obviously, whether a violation of section 1090 will result from a contract’s execution is fact-specific. However, there seems little doubt that such a violation would likely be found in this case. PDC undeniably was a central participant in the preparation of the EIR, and of the verbal and video presentations of August 1, 2006, which led to the Council’s decision to order the staff to move forward with the design of the Regents Road Bridge. The Phase I contract called for an even-handed evaluation of several alternatives. This placed PDC in a position where it had the power to control the framing of the recommendations to the Council, and where it thus could, for example, slant the Phase I analysis toward the alternative that would generate the largest Phase II contract, since it knew that the City intended to have PDC do the Phase II work. There can be little doubt that this situation represented one of “possible temptation for the average man.” *Tumey v. Ohio*, 273 U.S. 510, 532 (1927).

A contract made in violation of section 1090 is not merely voidable, but void. *Thompson v. Call*, 38 Cal. 3d 633, 646 (1985). Thus, any purported Council approval of the proposed Phase II Contract (or any Phase II contract with PDC) would, in effect, be a nullity, as the contract cannot be valid in any event.

#### **B. Government Code §§ 87100 and 87100.1**

Finally, the Political Reform Act, at section 81700 is directly applicable here and also prohibits this contract. It provides:

No public official<sup>10</sup> at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Section 87100 applies to individuals, and thus affects those PDC principals and employees who directly participated in the decision in question.<sup>11</sup> Cal. Gov’t Code section

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<sup>9</sup> Indeed, it should be acknowledged here that this memo is not intended to suggest that PDC in any way altered its performance in order to maximize benefits to itself.

<sup>10</sup> That section 87100 applies to consultants is even more clear than with section 1090, as the statute itself unambiguously so provides. See Cal. Gov’t Code section 82048.

<sup>11</sup> Although a consultant’s participation in a decision may be cleansed by “independent substantive review” of that decision, this exception to section 87100’s prohibition is inapplicable here, because it requires that the agency making the decision not rely on the consultant’s work unless that data has been independently verified by the decision-making body. *In re Nelson*,

87103. A disqualifying effect is any effect on the consultant's economic interests that is distinguishable from the effect of the decision on the general public.

Again, there can be no doubt, based on the facts discussed above, that PDC "participated" in the making of the Council's August 1, 2006 decision to select the Regents Road Bridge from among the available alternatives. And PDC certainly knew it had a financial interest, clearly distinguishable from that of the general public, in which alternative was selected. This selection would, according to the original RFQ, define PDC's Phase II scope of work.

The only factor that might take this situation out of the operation of section 87100 is section 81700.1, which was added in 1991 specifically to limit the operation of section 87100 where engineers are concerned. It provides that there is no prohibited financial interest where a consultant engineer renders services "independently of the control and direction of the public agency" and "does not exercise public agency decision making authority." Cal. Gov't Code section 87100.1(a).

There are no cases construing section 87100.1. The few Fair Political Practices Commission decisions that mention it shed no real light on whether it would be applied in a situation where the consulting engineer not only rendered services, but did so with the clear expectation that those services would inform a selection among alternative projects that would directly affect the consultant's bottom line because of an expected follow-on contract.

It seems unlikely that the Legislature intended to declare by simple fiat that an engineering consultant "does not have a financial interest" where, as here, it is clear that such an interest exists. Because section 87100 codifies a long-standing common law rule, section 87100.1, which limits section 87100's application, must be strictly construed. *In re Jeffrey M.*, 141 Cal. App. 4th 1017, 1027, n. 5 (2006). There is nothing in the legislative history that suggests that section 87100.1 was intended to exempt a situation where the value of a follow-on contract with the engineer would flow directly from the decision in question. Rather, it was enacted to alleviate a situation where public agencies were "being forced to delay action or impose moratoria on requests for certain types of discretionary approvals because they ha[d] insufficient staff to evaluate such requests." CA Legis. 887 (1991). Such concerns do not appear implicated here. It is surpassingly unlikely that section 87100.1 was intended to generally permit consulting engineers to participate in decisions where they would have the chance to steer lucrative contracts toward themselves.

Moreover, even if section 81700.1 casts doubt on the applicability of section 81700, section 1090 is still applicable, because it has been specifically found that the former did not affect the application of the latter. *See City of Vernon v. Central Basin Water Dist.*, 69 Cal. App. 4th 508 (1999) (The Political Reform Act did not by implication repeal section 1090, and both



must be complied with). Thus, approval of the proposed Phase II contract would result in a violation of at least one, and more likely two provisions of the Government Code.

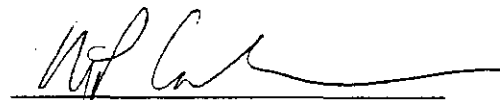
### CONCLUSION

The proposed Phase II contract with PDC would be inconsistent with state and municipal law in numerous respects. First, the procurement process from 2002/2003 cannot support the environmental work now proposed in the Phase II Contract, because that work, even if it was contemplated at the time, was not called for in the original scope of work. A new procurement process under CP 300-07 and A.R. 25.60 would be necessary for the environmental work. Second, to the extent that the non-environmental work is within the scope of the original procurement, it would extend the contract beyond five years, and thus require approval by an ordinance supported by a six-vote Council majority, under City Charter section 99. Such an ordinance has not been presented.

But, more important, such a contract with PDC cannot be approved in any event, because it would result in a statutorily prohibited conflict of interest. PDC had a direct interest, when performing its Phase I work, in influencing the City to select a project alternative that would produce the most lucrative Phase II Contract for PDC. This would violate sections 1090 and 87100 of the Government Code, and corresponding provisions of the San Diego Municipal Code, and thus render the contract void.

MICHAEL J. AGUIRRE, City Attorney

By



Michael P. Calabrese  
Chief Deputy City Attorney

MPC:sc

cc: Patti Boekamp, Engineering & Capital Projects Department

Office of  
The City Attorney  
City of San Diego

MEMORANDUM  
MS 59

(619) 236-6220

**DATE:** July 26, 2007  
**TO:** City Clerk  
**FROM:** City Attorney  
**SUBJECT:** Tuesday, July 31, 2007 Docket  
Item No. 333

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Upon reviewing the supporting materials that your office has posted in support of Item No. 333 on the City Council's July 31, 2007 Agenda, we have noticed some errors and omissions. By this memo, we request that they be corrected.

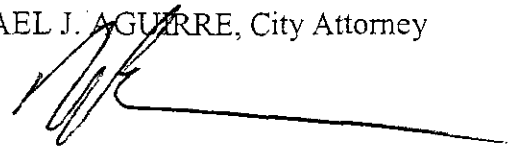
We note that the correct Form CM-1472 has now been posted, replacing the form that had previously accompanied the item. However, the accompanying resolution and ordinance were not complete. We have corrected them, and the corrected documents are attached. This office has NOT approved the legality of either document, but has approved as to form only.

In addition, there are significant legal issues surrounding the proposed action. This office has twice opined that the proposed contract underlying the item could not be lawfully entered. We note that you have posted this office's April 4, 2007 memorandum with the materials, along with a July 13, 2007 memorandum from outside counsel. However, this office also addressed these issues on July 24, 2007; that memo is not currently posted. Thus, we request that our memorandum of July 24, 2007 be placed with the supporting materials. I have attached that memorandum hereto.

Thanks you for your assistance.

MICHAEL J. AGUIRRE, City Attorney

By

  
Michael Calabrese  
Chief Deputy City Attorney

MPC:

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53  
10/9REQUEST FOR COUNCIL ACTION  
CITY OF SAN DIEGO1. CERTIFICATE NUM  
(FOR AUDITOR'S USE ONLY)

2800037

TO:  
CITY ATTORNEY2. FROM (ORIGINATING DEPARTMENT):  
ENGINEERING & CAPITAL PROJECTS3. DATE:  
7/16/07

4. SUBJECT:

Consultant Agreement-Regents Road Bridge and Limited Roadway Changes Project

5. PRIMARY CONTACT (NAME, PHONE &amp; MAIL STA.)

Dave Zoumaras 619-533-3138 MS 612

6. SECONDARY CONTACT (NAME, PHONE &amp; MAIL STA.)

Kris Shackelford 619-533-3781 MS 612

7. CHECK BOX IF REPORT TO  
COUNCIL IS ATTACHED ☒

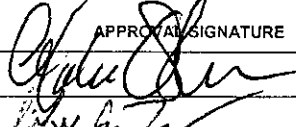
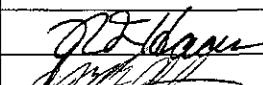
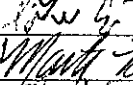
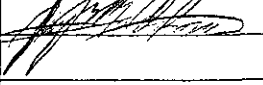
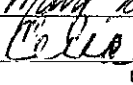
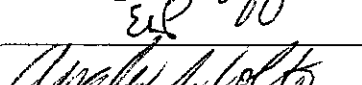
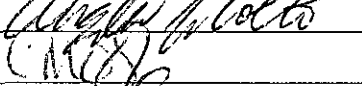
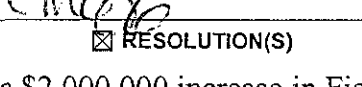
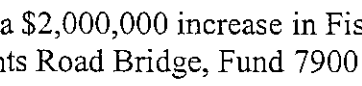
## 8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	79001	79001		
DEPT.	30244			
ORGANIZATION	107			
OBJECT ACCOUNT	4279	9544		
JOB ORDER	530440			
C.I.P. NUMBER	53-044.0			
AMOUNT	\$2,861,373	2,000,000		

9. ADDITIONAL INFORMATION / ESTIMATED COST:

Consultant Agreement: \$4,861,373

## 10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT		7/20/07	8	DEPUTY CHIEF		7/20/07
2	FF		7/20/07	9	COO		7/23/07
3	EAS		7/20/07	10	CITY ATTORNEY		
4	EOCP		7/20/07	11	ORIGINATING DEPARTMENT		
5	LIAISON OFFICE		7/20/07	DOCKET COORD: _____ COUNCIL LIAISON: _____			
6	CIP/FM		7/20/07	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION			
7	AUDITOR		7/20/07	REFER TO: _____ COUNCIL DATE: _____			

11. PREPARATION OF:

☒ RESOLUTION(S) ☒ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

1. Authorizing a \$2,000,000 increase in Fiscal Year 2008 Capital Improvements Program Budget for CIP 53-044.0, Regents Road Bridge, Fund 79001, North University City Facilities Benefit Assessment; and

(Continued)

11A. STAFF RECOMMENDATIONS:

Approve the Resolutions

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): 1, Scott Peters

COMMUNITY AREA(S): University

CITY CLERK INSTRUCTIONS: Please send a copy of the resolutions to Kris Shackelford at MS 612

ENVIRONMENTAL IMPACT: This activity (executing an Agreement and transfer of funds) is not a "project" and is therefore exempt from CEQA pursuant to State CEQA guidelines Section S15060(c)(3). Additional CEQA review is required prior to approval of development permits and expenditure of funds for construction.

HOUSING IMPACT: None with this action

OTHER ISSUES: Attachments: Agreement

000072

2. Authorizing the City Auditor and Comptroller to appropriate and expend \$2,000,000 to CIP 53-044.0, Regents Road Bridge, Fund 79001, North University City Facilities Benefit Assessment, for the purpose of entering into a Consultant Agreement for Regents Road Bridge and Limited Roadway Changes Project; and
3. Authorizing an amendment of the North University City Public Facilities Financing Plan (PFFP) for Fiscal Year 2007 by transferring \$2,000,000 originally scheduled in Fiscal Year 2009 to Fiscal Year 2007 for Project NUC-18, Regents Road Bridge, in North University City Facilities Benefit Assessment, Fund 79001; and
4. Authorizing the execution of an Agreement with Project Design Consultants in the amount not to exceed \$ 4,861,373 to provide design services for the Regents Road Bridge and Limited Roadway Changes Project; and
5. Authorizing the expenditures of \$4,861,373 for the purpose of funding this Agreement with Project Design Consultants; and
6. Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess funds, if any, to the appropriate reserves.

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE EXECUTION OF A  
CONSULTANT AGREEMENT WITH PROJECT DESIGN  
CONSULTANTS FOR THE REGENTS ROAD BRIDGE AND  
LIMITED ROADWAY CHANGES.

WHEREAS, under the San Diego Charter section 99 no contract, agreement or obligation extending for a period of more than five years may be authorized except by ordinance adopted by a two-thirds' majority vote of the City Council; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor, or his designee, is authorized to execute an agreement with Project Design Consultants under the terms and conditions set forth in the document filed in the Office of the City clerk as Document No. OO- \_\_\_\_\_, together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the Mayor or his designee deem necessary from time to time in order to carry out the purpose and intent of this project and agreement, for the purpose of preparing supplemental environmental document, obtaining permits, and providing design services for the Regents Road Bridge and Limited Roadway Changes Project; and

Section 2. That the expenditure of an amount not to exceed \$4,861,373 is authorized for the aforementioned agreement, provided that the City Auditor and Comptroller for the aforementioned agreement, provided that the City Auditor and Comptroller first certifies that the necessary funds are, or will be, on deposit in the City Treasury; and

Section 3. That the City Auditor and Comptroller, upon advice from the administering department, is authorized to transfer excess funds, if any, to the appropriate reserves.

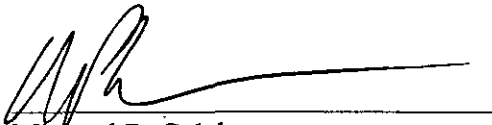
Section 4. Stating that this activity is not a "project" and is therefore exempt from California Environmental Quality Act [CEQA] pursuant to State CEQA guidelines Section 15060(c)(3).

Section 5. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 6. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

  
Michael P. Calabrese  
Chief Deputy City Attorney

*Approved as to form only,  
and not as to legality. See  
City Attorney's April, 4, 2007 and  
July 24, 2007 memos.*

MPC:sc  
07/26/07  
07/30/07 COR. COPY  
09/20/07 COR. COPY 2  
Aud.Cert.:AC2800037  
Or.Dept:E&CP  
O-2008-18

000075

(O-2008-16 COR. COPY 2)

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

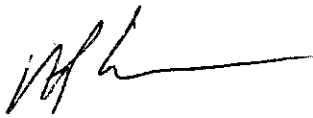
BE IT RESOLVED, by the Council of the City of San Diego as follows:


1. That the City Auditor and Comptroller is authorized to increase the Fiscal Year 2007 Capital Improvements Program Budget for CIP 53-044.0, Regents Road Bridge, Fund 79001, North University City Facilities Benefit Assessment in the amount of \$2,000,000; and
2. That the City Auditor and Comptroller is hereby authorized to appropriate and expend \$2,000,000 for CIP 53-044.0, Regents Road Bridge, Fund 79001, North University City Facilities Benefit Assessment, for the purpose of entering into a consultant agreement for the Regents Road Bridge and Limited Roadway Changes Project; and
3. That the Mayor, or his designee, is authorized to amend the North University City Public Facilities Financing Plan (PFFP) for Fiscal Year 2007 by transferring \$2,000,000 originally scheduled in Fiscal Year 2009 to Fiscal Year 2007 for Project NUC-18, Regents Road Bridge, in North University City Facilities Benefit Assessment, Fund 79001; and
4. Stating that this activity is not a "project" and is therefore exempt from California Environmental Quality Act [CEQA] pursuant to State CEQA guidelines Section 15060(c)(3).



APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

  
Michael P. Calabrese  
Chief Deputy City Attorney

Approved as to the form of this document only.  
Not approved as to: 1. legal issues surrounding  
the underlying action; or 2. The process  
by which this action comes before the  
Council. See our July 24, 2007 memo.  


MPC:sc  
07/26/07  
Aud.Cert.:AC2800037  
Or.Dept:E&CP  
R-2008-110

I hereby certify that the foregoing Resolution was passed by the Council of the City of San  
Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
FOR  
THE CITY OF SAN DIEGO  
ENGINEERING & CAPITAL PROJECTS DEPARTMENT**

**LUMP SUM AGREEMENT  
FOR  
REGENTS ROAD BRIDGE AND LIMITED ROADWAY CHANGES**

***CONTRACT NUMBER:*** H073678

**THE CITY OF SAN DIEGO  
AND  
PROJECT DESIGN CONSULTANTS**

## TABLE OF CONTENTS

### ARTICLE I DESIGN PROFESSIONAL SERVICES

1.1	Scope of Services .....	5
1.2	Contract Administrator.....	5
1.3	City Modification of Scope of Services.....	6
1.4	Written Authorization.....	6
1.5	Confidentiality of Services. ....	6
1.6	Competitive Bidding.....	6

### ARTICLE II DURATION OF AGREEMENT

2.1	Term of Agreement.....	7
2.2	Time of Essence).....	7
2.3	Notification of Delay .....	7
2.4	Delay.....	7
2.5	City's Right to Suspend for Convenience. ....	7
2.6	City's Right to Terminate for Convenience.....	8
2.7	City's Right to Terminate for Default.....	8

### ARTICLE III COMPENSATION

3.1	Amount of Compensation. ....	8
3.2	Additional Services. ....	8
3.3	Manner of Payment. ....	9
3.4	Additional Costs.....	9
3.5	Eighty Percent Notification.....	9

### ARTICLE IV DESIGN PROFESSIONAL'S OBLIGATIONS

4.1	Industry Standards.....	9
4.2	Right to Audit.....	10
4.3	Insurance. ....	10
4.4	Subcontractors .....	14
4.5	Contract Activity Report.....	15
4.6	Non-Discrimination Requirements.....	15
4.7	Drug-Free Workplace.....	16
4.8	Title 24/Americans with Disabilities Act Requirements.....	16
4.9	Product Endorsement.....	17
4.10	Conflict of Interest. ....	17
4.11	Mandatory Assistance. ....	18
4.12	Compensation for Mandatory Assistance.....	18

4.13	Attorney Fees related to Mandatory Assistance .....	18
4.14	Energy Conservation Specifications.....	18
4.15	Notification of Increased Construction Cost.....	19
4.16	Sustainable Building Policy.....	19
4.17	Design-Build Competition Eligibility.....	19
4.18	Storm Water Management Discharge Control.....	19

## ARTICLE V RESERVED

## ARTICLE VI INDEMNIFICATION

6.1	Indemnification.....	20
6.2	Design Professional Services Indemnification and Defense.....	20
6.3	Insurance.....	20
6.4	Enforcement Costs.....	20

## ARTICLE VII MEDIATION

7.1	Mandatory Non-binding Mediation.....	20
7.2	Mandatory Mediation Costs.....	21
7.3	Selection of Mediator.....	21
7.4	Conduct of Mediation Sessions.....	21

## ARTICLE VIII INTELLECTUAL PROPERTY RIGHTS

8.1	Work For Hire.....	23
8.2.	Rights in Data.....	23
8.3	Intellectual Property Rights Assignment Design Professional.....	23
8.4	Moral Rights.....	23
8.5	Subcontracting.....	23
8.6	Publication Design Professional.....	24
8.7	Intellectual Property Warranty and Indemnification.....	24
8.8	Enforcement Costs.....	24

**ARTICLE IX**  
**MISCELLANEOUS**

9.1	Notices. ....	24
9.2	Headings. ....	24
9.3	Non-Assignment. ....	25
9.4	Independent Contractors. ....	25
9.5	Design Professional and Subcontractor Principals for Professional Services. ....	25
9.6	Additional Design Professionals or Contractors. ....	25
9.7	Employment of City Staff. ....	25
9.8	Covenants and Conditions. ....	25
9.9	Compliance with Controlling Law. ....	25
9.10	Jurisdiction and Attorney Fees. ....	26
9.11	Successors in Interest. ....	26
9.12	Integration. ....	26
9.13	Counterparts. ....	26
9.14	No Waiver. ....	26
9.15	Severability. ....	26
9.16	Municipal Powers. ....	26
9.17	Drafting Ambiguities. ....	26
9.18	Conflicts Between Terms. ....	27
9.19	Design Professional Evaluation. ....	27
9.20	Exhibits Incorporated. ....	27
9.21	Survival of Obligations. ....	27

**DESIGN PROFESSIONAL LUMP SUM AGREEMENT EXHIBITS**

Exhibit A - Scope of Services

Exhibit B - Compensation and Fee Schedule

Exhibit C - Time Schedule

Exhibit D - City's Equal Opportunity Contracting Program Consultant Requirements

(AA) Work Force Report

(BB) Subcontractors List

(CC) Contract Activity Report

Exhibit E - Consultant Certification for a Drug-Free Workplace

Exhibit F - Determination Form

Exhibit G - City Council Green Building Policy 900-14

Exhibit H - Consultant Evaluation Form

**LUMP SUM AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO  
AND PROJECT DESIGN CONSULTANTS  
FOR DESIGN PROFESSIONAL SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and Project Design Consultants [Design Professional] for the Design Professional to provide Professional Services to the City for the Regents Road Bridge and Limited Roadway Changes [Project].

**RECITALS**

The City wants to retain the services of a professional engineering consulting firm to provide professional engineering services [Professional Services].

The Design Professional represents that it has the expertise, experience and personnel necessary to provide the Professional Services for the Project.

The City and the Design Professional [Parties] want to enter into an Agreement whereby the City will retain the Design Professional to provide, and the Design Professional shall provide, the Professional Services for the Project [Agreement]. This Agreement does not include any authorization for construction.

In consideration of the above recitals and the mutual covenants and conditions set forth, herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

**ARTICLE I**

**DESIGN PROFESSIONAL SERVICES**

The above-listed recitals are true and correct and are hereby incorporated by reference.

**1.1 Scope of Services.** The Design Professional shall perform the Professional Services as set forth in the written Scope of Services (Exhibit A) at the direction of the City

**1.2 Contract Administrator.** The Engineering & Capital Projects Department is the contract administrator for this Agreement. The Design Professional shall provide the Professional Services under the direction of a designated representative of the Engineering & Capital Projects Department. The City's designated representative will communicate with the Design Professional on all matters related to the administration of this Agreement and the Design Professional's performance of the Professional Services rendered hereunder. When this

Agreement refers to communications to or with the City, those communications will be with the designated representative, unless the designated representative or the Agreement specifies otherwise. However, when this Agreement refers to an act or approval to be performed by City, that act or approval shall be performed by the Mayor or his designee, unless the Agreement specifies otherwise.

**1.3 City Modification of Scope of Services.** The City may, without invalidating this Agreement, order changes in the Scope of Services by altering, adding to or deducting from the Professional Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the Design Professional's cost of, or the time required for, the performance of any of the Professional Services, the Design Professional shall immediately notify the City. If the City deems it appropriate, an equitable adjustment to the Design Professional's compensation or time for performance may be made, provided that any adjustment must be approved by both Parties in writing in accordance with Section 9.1 of this Agreement..

**1.4 Written Authorization.** Prior to performing any Professional Services in connection with the Project, the Design Professional shall obtain from the City a written authorization to proceed. Further, throughout the term of this Agreement, the Design Professional shall immediately advise the City in writing of any anticipated change in the Scope of Services (Exhibit A), Compensation and Fee Schedule (Exhibit B), or Time Schedule (Exhibit C), and shall obtain the City's written consent to the change prior to making any changes. In no event shall the City's consent be construed to relieve the Design Professional from its duty to render all Professional Services in accordance with applicable laws and accepted industry standards.

**1.5 Confidentiality of Services.** All Professional Services performed by the Design Professional, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Design Professional, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to the Design Professional, at the time that it was disclosed to the Design Professional by the City, (b) subsequently becomes publicly known through no act or omission of the Design Professional, or (c) otherwise becomes known to the Design Professional other than through disclosure by the City. Except for Subcontractors covered by Section 4.4, neither the documents nor their contents shall be released to any third party without the prior written consent of the City.

**1.6 Competitive Bidding.** The Design Professional shall ensure that any plans and specifications prepared, required, or recommended under this Agreement allow for competitive bidding. The Design Professional shall design such plans or specifications so that procurement of services, labor or materials are not available from only one source, and shall not design plans and specifications around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City. The Design Professional shall submit this written justification to the City prior to beginning work on such plans or specifications. Whenever the Design Professional

recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.

## ARTICLE II

### DURATION OF AGREEMENT

**2.1 Term of Agreement.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be effective until completion of the Scope of Services or August 2012, whichever is the earliest but not to exceed five years unless approved by City ordinance.

**2.2 Time of Essence.** Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement. The time for performance of the Scope of Services (Exhibit A) is set forth in the Time Schedule (Exhibit C).

**2.3 Notification of Delay.** The Design Professional shall immediately notify the City in writing if the Design Professional experiences or anticipates experiencing a delay in performing the Professional Services within the time frames set forth in the Time Schedule (Exhibit C). The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If in the opinion of the City, the delay affects a material part of the Project, the City may exercise its rights under Sections 2.5-2.7 of this Agreement.

**2.4 Delay.** If delays in the performance of the Professional Services are caused by unforeseen events beyond the control of the Parties, such delay may entitle the Design Professional to a reasonable extension of time, but such delay shall not entitle the Design Professional to damages or additional compensation. Any such extension of time must be approved in writing by the City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the Design Professional's work; inability to obtain materials, equipment, or labor; required additional Professional Services; or other specific reasons agreed to between the City and the Design Professional; provided, however, that: (a) this provision shall not apply to, and the Design Professional shall not be entitled to an extension of time for, a delay caused by the acts or omissions of the Design Professional; and (b) a delay caused by the inability to obtain materials, equipment, or labor shall not entitle the Design Professional to an extension of time unless the Design Professional furnishes the City, in a timely manner, documentary proof satisfactory to City of the Design Professional's inability to obtain materials, equipment, or labor.

**2.5 City's Right to Suspend for Convenience.** The City may, at its sole option and for its convenience, suspend all or any portion of the Design Professional's performance of the Professional Services, for a reasonable period of time not to exceed six months. In accordance with the provisions of this Agreement, the City will give written notice to the Design Professional of such suspension. In the event of such a suspension, in accordance with the provisions of Article III of this Agreement, the City shall pay to the Design Professional a sum equivalent to the reasonable value of the Professional Services the Design Professional has satisfactorily performed up to the date of suspension. Thereafter, the City may rescind such suspension by giving written notice of rescission to the Design Professional. The City may



then require the Design Professional to resume performance of the Professional Services in compliance with the terms and conditions of this Agreement; provided, however, that the Design Professional shall be entitled to an extension of time equal to the length of the suspension, unless otherwise agreed to in writing by the Parties.

**2.6 City's Right to Terminate for Convenience.** The City may, at its sole option and for its convenience, terminate all or any portion of the Professional Services agreed to pursuant to this Agreement by giving written notice of such termination to the Design Professional. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Professional Services shall be effective upon receipt of the notice by the Design Professional. After termination of this Agreement, the Design Professional shall complete any and all additional work necessary for the orderly filing of documents and closing of the Design Professional's Professional Services under this Agreement. For services satisfactorily rendered in completing the work, the Design Professional shall be entitled to fair and reasonable compensation for the Professional Services performed by the Design Professional before the effective date of termination. After filing of documents and completion of performance, the Design Professional shall deliver to the City all drawings, plans, calculations, specifications and other documents or records related to both the Project and to the Design Professional's Professional Services on the Project. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the Design Professional discharges the City of all of the City's payment obligations and liabilities under this Agreement.

**2.7 City's Right to Terminate for Default.** If the Design Professional fails to satisfactorily perform any obligation required by this Agreement, the Design Professional's failure constitutes a Default. A Default includes the Design Professional's failure to adhere to the Time Schedule. If the Design Professional fails to satisfactorily cure a Default within ten calendar days of receiving written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Design Professional, and any person claiming any rights by or through the Design Professional under this Agreement. The rights and remedies of the City enumerated in this Section are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Design Professional.

### ARTICLE III

#### COMPENSATION

**3.1 Amount of Compensation.** The City shall pay the Design Professional for performance of all Professional Services rendered in accordance with this Agreement, including reasonably related expenses, in a lump sum amount not to exceed \$4,861,373. The compensation for the Scope of Services shall not exceed \$4,861,373, and the compensation for Additional Services (described in Section 3.3), if any, shall not exceed \$200,000.

**3.2 Additional Services.** The City may require that the Design Professional perform additional Professional Services beyond those described in the Scope of Services [Additional Services]. Prior to the Design Professional's performance of Additional Services,

the City and the Design Professional must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with the Compensation and Fee Schedule (Exhibit B). The City will pay the Design Professional for the performance of Additional Services in accordance with Section 3.3.

**3.3 Manner of Payment.** The City shall pay the Design Professional in accordance with the Compensation and Fee Schedule (Exhibit B). For the duration of this Agreement, the Design Professional shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. The Design Professional shall submit one invoice per calendar month in a form acceptable to City in accordance with the Compensation and Fee Schedule. The Design Professional shall include with each invoice a description of completed Professional Services, reasonably related expenses, if any, and all other information, including but not limited to: the progress percentage of the Scope of Services and/or deliverables completed prior to the invoice date, as required by the City. The City will pay undisputed portions of invoices within thirty calendar days of receipt.

**3.4 Additional Costs.** Additional Costs are those costs that can be reasonably determined to be related to the Design Professional's errors or omissions, and may include Design Professional, City, or Subcontractor overhead, construction, materials, demolition, and related costs. The Design Professional shall not be paid for the Professional Services required due to the Design Professional's errors or omissions, and the Design Professional shall be responsible for any Additional Costs associated with such errors or omissions. These Additional Costs may be deducted from monies due, or that become due, the Design Professional. Whether or not there are any monies due, or becoming due, the Design Professional shall reimburse the City for Additional Costs due to the Design Professional's errors or omissions.

**3.5 Eighty Percent Notification.** The Design Professional shall promptly notify the City in writing of any potential cost overruns. Cost overruns include, but are not limited to the following: (1) where anticipated costs to be incurred in the next sixty calendar days, when added to all costs previously incurred, will exceed 80 percent of the maximum compensation for this Agreement; or (2) where the total cost for performance of the Scope of Services (Exhibit A) appears that it may be greater than the maximum compensation for this Agreement.

## ARTICLE IV

### DESIGN PROFESSIONAL'S OBLIGATIONS

**4.1 Industry Standards.** The Design Professional agrees that the Professional Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent professional engineering firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the Mayor or his designee, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Design Professional of responsibility for complying with all applicable laws, codes, and good consulting practices.

## **4.2 Right to Audit.**

**4.2.1 Access.** The City retains the right to review and audit, and the reasonable right of access to Design Professional's and any Subcontractor's premises to review and audit the Design Professional's or Subcontractor's compliance with the provisions of this Agreement [City's Right]. The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of the Design Professional's premises, of any and all Project-related records with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. This information shall be kept by the City in the strictest confidence allowed by law.

**4.2.2 Audit.** The City's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the City determines are necessary to discover and verify that the Design Professional or Subcontractor is in compliance with all requirements under this Agreement.

**4.2.2.1 Cost Audit.** If there is a claim for additional compensation or for Additional Services, the City's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

**4.2.2.2 Accounting Records.** The Design Professional and all Subcontractors shall maintain complete and accurate records in accordance with Generally Accepted Accounting Practices in the industry. The Design Professional and Subcontractors shall make available to the City for review and audit; all Project related accounting records and documents, and any other financial data. Upon the City's request, the Design Professional and Subcontractors shall submit exact duplicates of originals of all requested records to the City.

**4.2.3 City's Right Binding on Subcontractors.** The Design Professional shall include the City's Right as described in Section 4.2, in any and all of their subcontracts, and shall ensure that these sections are binding upon all Subcontractors.

**4.2.4 Compliance Required before Mediation or Litigation.** A condition precedent to proceeding with mandatory mediation and further litigation provided for in Article VII is the Design Professional's and Subcontractors full compliance with the provisions of this Section 4.2 within sixty days of the date on which the City mailed a written request to review and audit compliance.

**4.3 Insurance.** The Design Professional shall not begin the Professional Services under this Agreement until it has: (a) obtained, and provided to the City, insurance certificates and endorsements reflecting evidence of all insurance required in Article IV, Section 4.3.1; however, the City reserves the right to request, and the Design Professional shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each company or companies as required by Article IV, Section 4.3.2; and (c) confirmed that all policies contain the specific provisions required in Article IV, Section 4.3.4. Design Professional's liabilities, including but not limited to Design Professional's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance

required hereunder must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and Design Professional's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City.

Further, the Design Professional shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

**4.3.1 Types of Insurance.** At all times during the term of this Agreement, the Design Professional shall maintain insurance coverage as follows:

**4.3.1.1 Commercial General Liability.** Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

**4.3.1.2 Commercial Automobile Liability.** For all of the Design Professional's automobiles including owned, hired and non-owned automobiles, the Design Professional shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile([any auto).

**4.3.1.3 Workers' Compensation.** For all of the Design Professional's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Design Professional shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the Design Professional shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

**4.3.1.4 Architects & Engineers Professional Liability.** For all of the Design Professional's employees who are subject to this Agreement, the Design Professional shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of \$1 million per claim and \$2 million annual aggregate. The Design Professional shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Project; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Project or termination of this Agreement whichever occurs last. The Design Professional agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss. All defense costs shall be outside the limits of the policy.

the Design Professional and shall be disclosed to the City at the time the evidence of insurance is provided.

#### **4.3.3 Acceptability of Insurers.**

**4.3.3.1** Except for the State Compensation Insurance Fund, all insurance required by this Contract or in the Special General Conditions shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City.

**4.3.3.2** The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

#### **4.3.4 Required Endorsements.**

The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Agreement.

##### **4.3.4.1 Commercial General Liability Insurance Endorsements.**

**ADDITIONAL INSURED.** To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

**PRIMARY AND NON-CONTRIBUTORY COVERAGE.** The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the *Named Insured*. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Design Professional's insurance and shall not contribute to it.

**CANCELLATION.** Except as provided for under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

**SEVERABILITY OF INTEREST.** The policy or policies must be endorsed to provide that the Design Professional's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

#### **4.3.4.2 Automobile Liability Insurance Endorsements**

**ADDITIONAL INSURED.** To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the Design Professional.

**CANCELLATION.** Except as provided for under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payments of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

**SEVERABILITY OF INTEREST.** The policy or policies must be endorsed to provide that Design Professional's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

#### **4.3.4.3 Worker's Compensation and Employer's Liability Insurance Endorsements.**

**CANCELLATION.** Except as provided for under California law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

**WAIVER OF SUBROGATION.** The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

#### **4.3.4.4 Architects & Engineers Professional Liability Insurance.**

**CANCELLATION.** Except as provide for under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

**4.3.5 Reservation of Rights.** The City reserves the right, from time to time, to review the Design Professional's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Design

Professional for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.

**4.3.6 Additional Insurance.** The Design Professional may obtain additional insurance not required by this Agreement.

**4.3.7 Excess Insurance.** All policies providing excess coverage to the City shall follow the form of the primary policy or policies including but not limited to all endorsements.

**4.4 Subcontractors.** The Design Professional's hiring or retaining of any third parties [Subcontractors] to perform services related to the Project [Subcontractor Services] is subject to prior approval by the City. The Design Professional shall list on the Subcontractor List (Exhibit D Attachment BB) all Subcontractors known to the Design Professional at the time this Agreement is entered. If at any time after this Agreement is entered into the Design Professional identifies a need for additional Subcontractor Services, the Design Professional shall give written notice to the City of the need, at least forty-five days before entering into a contract for such Subcontractor Services. The Design Professional's notice shall include a justification, a description of the scope of work, and an estimate of all costs for the Subcontractor Services. The Design Professional may request that the City reduce the forty-five day notice period. The City agrees to consider such requests in good faith.

**4.4.1 Subcontractor Contract.** All contracts entered into between the Design Professional and any Subcontractor shall contain the information as described in Sections 4.6, 4.7, 4.10.2, and 4.18, and shall also provide as follows:

**4.4.1.1** Each Subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. Each Subcontractor shall obtain, and the Design Professional shall require the Subcontractor to obtain, all policies described in Section 4.3.1 in the amounts required by the City, which shall not be greater than the amounts required of the Design Professional.

**4.4.1.2** The Design Professional is obligated to pay the Subcontractor, for Design Professional and City-approved invoice amounts, out of amounts paid by the City to the Design Professional, not later than fourteen working days from the Design Professional's receipt of payment from the City. Nothing in this paragraph shall be construed to impair the right of the Design Professional and any Subcontractor to negotiate fair and reasonable pricing and payment provisions among themselves.

**4.4.1.3** In the case of a deficiency in the performance of Subcontractor Services, the Design Professional shall notify the City in writing of any withholding of payment to the Subcontractor, specifying: (a) the amount withheld; (b) the specific cause under the terms of the subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action the Subcontractor must take in order to receive the amount withheld. Once the Subcontractor corrects the deficiency, the Design Professional shall pay the Subcontractor the amount withheld within fourteen working days of the Design Professional's receipt of the City's next payment.

**4.4.1.4** In any dispute between the Design Professional and Subcontractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Design Professional agrees to defend and indemnify the City as described in Article VI of this Agreement in any dispute between the Design Professional and Subcontractor should the City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.

**4.4.1.5** The Subcontractor is bound to the City's Equal Opportunity Contracting Program covenants set forth in Article IV, Section 4.6 and Exhibit D of this Agreement.

**4.4.1.6** The City is an intended beneficiary of any work performed by the Subcontractor for purposes of establishing a duty of care between the Subcontractor and the City.

**4.5 Contract Activity Report.** The Design Professional shall submit statistical information to the City as requested in the City's Contract Activity Report (Exhibit D Attachment CC). The statistical information shall include the amount of subcontracting provided by firms during the period covered by the Contract Activity Report. With the Contract Activity Report, the Design Professional shall provide an invoice from each Subcontractor listed in the report. The Design Professional agrees to issue payment to each firm listed in the Report within fourteen working days of receiving payment from the City for Subcontractor Services as described in Section 4.4.1.

#### **4.6 Non-Discrimination Requirements.**

**4.6.1 Compliance with the City's Equal Opportunity Contracting Program.** The Design Professional shall comply with the City's Equal Opportunity Contracting Program Design Professional Requirements (Exhibit D). The Design Professional shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Design Professional shall provide equal opportunity in all employment practices. The Design Professional shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Design Professional Requirements. Nothing in this Section shall be interpreted to hold the Design Professional liable for any discriminatory practice of its Subcontractors.

**4.6.2 Non-Discrimination Ordinance.** The Design Professional shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subcontractors, vendors or suppliers. The Design Professional shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. The Design Professional understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between the Design Professional and any Subcontractors, vendors and suppliers.

**4.6.3 Compliance Investigations.** Upon the City's request, the Design Professional agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that the Design Professional has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Design Professional for each subcontract



or supply contract. The Design Professional further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance (San Diego Municipal Code sections 22.3501-22.3517) The Design Professional understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Design Professional up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Design Professional further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

**4.7 Drug-Free Workplace.** The Design Professional agrees to comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. The Design Professional shall certify to the City that it will provide a drug-free workplace by submitting a Design Professional Certification for a Drug-Free Workplace form (Exhibit E).

**4.7.1 Design Professional's Notice to Employees.** The Design Professional shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

**4.7.2 Drug-Free Awareness Program.** The Design Professional shall establish a drug-free awareness program to inform employees about : (1) the dangers of drug abuse in the work place; (2) the policy of maintaining a drug-free work place; (3) available drug counseling, rehabilitation, and employee assistance programs; (4) the penalties that may be imposed upon employees for drug abuse violations.

**4.7.3 Posting the Statement.** In addition to Section 4.7.1 above, the Design Professional shall post the drug-free policy in a prominent place.

**4.7.4 Subcontractor's Agreements.** The Design Professional further certifies that each contract for Subcontractor Services for this Project shall contain language that binds the Subcontractor to comply with the provisions of Article IV, Section 4.7 of this Agreement, as required by Sections 2.A.(1) through (3) of Council Policy 100-17. Design Professionals and Subcontractors shall be individually responsible for their own drug-free work place program.

**4.8 Title 24/Americans with Disabilities Act Requirements.** Design Professional has sole responsibility for ensuring that all Project plans and other design services comply with all accessibility requirements under Title 24 of the California Code of Regulations, known as the California Building Code (Title 24), and under the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in effect at the time the designs are submitted to the City for review. When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed by Design Professional (i.e., that which provides the most access). Design Professional warrants and certifies that any and all plans and specifications prepared for the City in accordance with this agreement shall meet all requirements under Title 24 and ADAAG. Design Professional understands that while the City will be reviewing Design Professional's designs for compliance in specific and certain areas under Title 24 and ADAAG prior to acceptance of Design Professional's designs, Design Professional understands and agrees that the City's access review process and its acceptance of Design Professional's

designs in no way limits the Design Professional's obligations under this agreement to prepare designs that comply with all requirements under Title 24 and ADAAG.

**4.9 Product Endorsement.** The Design Professional acknowledges and agrees to comply with the provisions of City of San Diego Administrative Regulation 95.65, concerning product endorsement. Any advertisement identifying or referring to the City as the user of a product or service requires the prior written approval of the City.

**4.10 Conflict of Interest.** The Design Professional is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

**4.10.1** If, in performing the Professional Services set forth in this Agreement, any member of the Design Professional's organization makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the individual shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the individual's relevant financial interests. The determination as to whether any individual members of the Design Professional's organization must make disclosures of relevant financial interests is set forth in the Determination Form (Exhibit F).

**4.10.1.1** If a determination is made that certain individuals must disclose relevant financial interests, the statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The individual shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the individuals are subject to a conflict of interest code. Each year thereafter, the individuals shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the individual was subject to a conflict of interest code. A Form 700 (Leaving Office Statement) shall also be filed when the individual discontinues services under this Agreement.

**4.10.1.2** If the City requires an individual member of the Design Professional's organization to file a statement of economic interests as a result of the Professional Services performed, the individual shall be considered a "City Official" subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.

**4.10.2** The Design Professional shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

**4.10.3** The Design Professional and its Subcontractors having subcontracts amounting to 1% or more of the value of the Professional Services agreed to under this Agreement are precluded from participating in design services on behalf of the contractor,

construction management, and any other construction services related in any way to these Professional Services without the prior written consent of the City.

**4.10.4** The Design Professional's personnel employed on the Project shall not accept gratuities or any other favors from any Subcontractors or potential Subcontractors. The Design Professional shall not recommend or specify any product, supplier, or contractor with whom the Design Professional has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

**4.10.5** If the Design Professional violates any conflict of interest law or any of the provisions in this Section 4.10, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Design Professional to liability to the City for attorney's fees and all damages sustained as a result of the violation.

**4.11 Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the Professional Services provided under this Agreement, upon the City's request, the Design Professional, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Design Professional's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

**4.12 Compensation for Mandatory Assistance.** The City will compensate the Design Professional for fees incurred for providing Mandatory Assistance as Additional Services under Section 3.3. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Design Professional, its agents, officers, and employees, the Design Professional shall reimburse the City. The City is then entitled to reimbursement of all fees paid to the Design Professional, its agents, officers, and employees for Mandatory Assistance.

**4.13 Attorney Fees related to Mandatory Assistance.** In providing the City with dispute or litigation assistance, the Design Professional or its agents, officers, and employees may incur expenses and/or costs. The Design Professional agrees that any attorney fees it may incur as a result of assistance provided under Section 4.11 are not reimbursable. The Parties agree this provision does not in any way affect their rights to seek attorney fees under Article VIII, Section 8.8 of this Agreement.

**4.14 Energy Conservation Specifications.** Technological advances in energy conservation devices such as Lighting and Heating, Ventilation, and Air Conditioning (HVAC), enable additional energy savings over that required by the State of California's Energy Efficiency Standards (Title 24, Part 6 of the California Code of Regulations). The Design Professional shall model the energy performance of the building using an acceptable computer model such as Energy Pro, EQuest, DOE-2, Power DOE, HAP 3.22, etc. and present the summary data to the City at or prior to 100 percent design. This analysis should include life cycle cost analysis showing recovery of construction costs through operation and maintenance costs (e.g., electricity and gas savings.) The Design Professional shall prepare a cost savings matrix that lists each device being considered and one, three, five and ten-year Project savings. The comparison shall include, but not be limited to, the following equipment: Lighting, HVAC, Water Heating, and Motors.

The Design Professional shall contact the SDG&E New Construction Program at (858) 636-5725 or the San Diego Regional Energy Office at (619) 595-5634 to integrate them into the design process to ensure maximum energy performance and access to technical resources. Design Professional shall endeavor to obtain from SDG&E a UTIL-1 (Utility Incentive Worksheet) to estimate energy savings and incentives available based on the design team energy modeling.

**4.15 Notification of Increased Construction Cost.** If, at any time prior to the City's approval of the final plans and specifications, the Design Professional anticipates that the total construction cost will exceed the estimated construction budget, the Design Professional shall immediately notify the City in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions which the Design Professional believes will bring the construction cost to *within the estimated construction budget*. The City may either: (1) approve an increase in the amount authorized for construction; or (2) delineate a project which may be constructed for the budget amount; or (3) any combination of (1) and (2).

**4.16 Sustainable Building Policy.** The Project design and construction shall comply with City Council Green Building Policy 900-14 (Exhibit G). All new or significantly remodeled City facilities shall be designed and constructed to achieve at a minimum the Leadership in Energy and Environmental Design (LEED) "Silver" Level Certification.

**4.17 Design-Build Competition Eligibility.** Any architectural firms, engineering firms, Design Professionals, or individuals retained by the City to assist the City with developing criteria or preparing the preliminary design or the request for proposals for a Design-Build competition shall not be eligible to participate with any Design-Build Entity in that Design-Build competition. Additionally, the City may determine in its sole discretion that a Subcontractor hired to assist with a Design-Build competition, regardless of whether the Subcontractor was hired by the City or hired by an architectural firm, engineering firm, Design Professional, or individual retained by the City, has a competitive advantage and as such is ineligible to participate in that Design-Build competition.

**4.18 Storm Water Management Discharge Control.** Unless specifically removed from the Scope of Work (Exhibit A), the Design Professional shall comply with Section 43.03 of the San Diego Municipal Code, Storm Water Management Discharge Control, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Enforcement Official. Further, the Design Professional shall prepare and incorporate into the construction documents a Storm Water Pollution Prevention Plan (SWPPP) to be implemented by the contractor during Project construction. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and any municipal regulations adopted pursuant to the permits.

## ARTICLE V

## RESERVED

## ARTICLE VI

### INDEMNIFICATION

**6.1 Indemnification.** Other than in the performance of design professional services which shall be solely as addressed in Section 6.2 below, to the fullest extent permitted by law, Design Professional shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Design Professional or its Subcontractors), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by the Design Professional, any Subcontractor, anyone directly or indirectly employed by them, or anyone that they control. The Design Professional's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.

#### **6.2 Design Professional Services Indemnification and Defense.**

**6.2.1 Design Professional Services Indemnification.** To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), with respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

**6.2.2 Design Professional Services Defense.** Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

**6.3 Insurance.** The provisions of this Article are not limited by the requirements of Section 4.3 related to insurance.

**6.4 Enforcement Costs.** The Design Professional agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in this Article.

## ARTICLE VII

### MEDIATION

**7.1 Mandatory Non-binding Mediation.** With the exception of Sections 2.5-2.7 of this Agreement, if a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using

mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association (AAA) or any other neutral organization agreed upon before having recourse in a court of law.

**7.2 Mandatory Mediation Costs.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator [Mediator], and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.

**7.3 Selection of Mediator.** A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

**7.3.1** If AAA is selected to coordinate the mediation, within ten working days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

**7.3.2** The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.

**7.3.3** If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.

**7.4 Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

**7.4.1** Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

**7.4.2** Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise

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agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

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## ARTICLE VIII

## INTELLECTUAL PROPERTY RIGHTS

**8.1 Work For Hire.** All original designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine, originated or prepared exclusively for the City pursuant to this Agreement (Deliverable Materials) is "work for hire" under the United States Copyright law and shall become the sole property of the City and shall be delivered to the City upon request. The Contractor, including its employees, and independent Subcontractor(s), shall not assert any common law or statutory patent, copyright, trademark, or any other intellectual proprietary right to the City to the deliverable Materials.

**8.2. Rights in Data.** All rights (including, but not limited to publication(s), registration of copyright(s), and trademark(s)) in the Deliverable Materials, developed by the Contractor, including its employees, agents, talent and independent Subcontractors pursuant to this Agreement are the sole property of the City. The Design Professional, including its employees, agents, talent, and independent Subcontractor(s), may not use any such Product mentioned in this article for purposes unrelated to Design Professional's work on behalf of the City without prior written consent of the City.

**8.3 Intellectual Property Rights Assignment.** Design Professional, its employees, agents, talent, and independent Subcontractor(s) agree to promptly execute and deliver, upon request by City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials; and cooperate and assist in the prosecution of any action or opposition proceeding involving said rights and any adjudication of the same.

**8.4 Moral Rights.** Design Professional, its employees, agents, talent, and independent Subcontractor(s) hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Deliverable Materials which Design Professional, its employees, agents, talent, and independent Subcontractor(s), may now have or which may accrue to Design Professional, its employees, agents, talent, and independent Subcontractor(s)' benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the and the right to object to any modification, translation or use of said content, and any similar rights existing under judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

**8.5 Subcontracting.** In the event that Design Professional utilizes a Subcontractor(s) for any portion of the Work that is in whole or in part of the specified Deliverable(s) to the City, the agreement between Design Professional and the Subcontractor [Subcontractor Agreement] shall include a statement that identifies that the Deliverable/Work product as a "work-for hire" as defined in the Act and that all intellectual property rights in the Deliverable/Work product, whether arising in copyright, trademark, service mark or other



belongs to and shall vest solely with the City. Further, the Subcontractor Agreement shall require that the Subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to the City, all titles, rights and interests in and to said Work/Deliverable, including all copyrights and other intellectual property rights. City shall have the right to review any Subcontractor agreement for compliance with this provision.

**8.6 Publication Design.** Professional may not publish or reproduce any Deliverable Materials, for purposes unrelated to Design Professional's work on behalf of the City without prior written consent of the City.

**8.7 Intellectual Property Warranty and Indemnification.** Design Professional represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Design Professional to produce, at Design Professional's own expense, new non-infringing materials, deliverables or Works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Design Professional further agrees to indemnify and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, services or Works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). If a Third Party Claim of Infringement is threatened or made before Design Professional receives payment under this contract, City shall be entitled, upon written notice to Design Professional, to withhold some or all of such payment.

**8.8 Enforcement Costs.** The Design Professional agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Article 8, including but not limited to, attorney's fees.

## ARTICLE IX

### MISCELLANEOUS

**9.1 Notices.** In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: City of San Diego, Engineering & Capital Projects Department, Transportation Engineering Design Division, 1010 Second Avenue, Suite 1200, San Diego, California, 92101 and notice to the Design Professional shall be addressed to: Project Design Consultants, 701 B Street, Suite 800, San Diego, California, 92101.

**9.2 Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.

**9.3 Non-Assignment.** The Design Professional shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

**9.4 Independent Contractors.** The Design Professional and any Subcontractors employed by the Design Professional shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Design Professional concerning the details of performing the Professional Services, or to exercise any control over such performance, shall mean only that the Design Professional shall follow the direction of the City concerning the end results of the performance.

**9.5 Design Professional and Subcontractor Principals for Professional Services.** It is understood that this Agreement is for unique Professional Services. Retention of the Design Professional's Professional Services is based on the particular professional expertise of the following members of the Design Professional's organization: Gordon Lutes[Project Team]. Accordingly, performance of Professional Services on the Project may not be delegated to other members of the Design Professional's organization or to Subcontractors without the prior written consent of the City. It is mutually agreed that the members of the Project Team are the principal persons responsible for delivery of all Professional Services and may not be removed from the Project without the City's prior written approval. Removal of any member of the Project Team without notice and approval by the City vide may be considered a default of the terms and conditions of this Agreement by the Design Professional. In the event any member of the Project Team becomes unavailable for any reason, the City must be consulted as to any replacement. If the City does not approve of a proposed replacement, the City may terminate this Agreement pursuant to section 2.6 of this Agreement. Further, the City reserves the right, after consultation with the Design Professional, to require any of the Design Professional's employees or agents to be removed from the Project.

**9.6 Additional Design Professionals or Contractors.** The City reserves the right to employ, at its own expense, such additional Design Professionals or contractors as the City deems necessary to perform work or to provide the Professional Services on the Project.

**9.7 Employment of City Staff.** This Agreement may be unilaterally and immediately terminated by the City, at its sole discretion, if the Design Professional employs an individual who, within the last twelve months immediately preceding such employment did, in the individual's capacity as an officer or employee of the City, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council or Mayor in connection with the selection of the Design Professional.

**9.8 Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the Design Professional, shall be deemed to be both covenants and conditions.

**9.9 Compliance with Controlling Law.** The Design Professional shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720 relating to the payment of prevailing wages during the design and preconstruction phases of a project, including inspection and land surveying work. In addition, the Design Professional shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

**9.10 Jurisdiction and Attorney Fees.** The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

**9.11 Successors in Interest.** This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

**9.12 Integration.** This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties. All prior negotiations and agreements are merged into this Agreement.

**9.13 Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

**9.14 No Waiver.** No failure of either the City or the Design Professional to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

**9.15 Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

**9.16 Municipal Powers.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

**9.17 Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall

not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

**9.18 Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

**9.19 Design Professional Evaluation.** City will evaluate Design Professional's performance of Professional Services on the Project using the Consultant Evaluation Form (Exhibit H).

**9.20 Exhibits Incorporated.** All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

**9.21 Survival of Obligations.** All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, shall survive, completion and acceptance of the Professional Services and termination or completion of the Agreement.

The remainder of this page has been intentionally left blank.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, pursuant to San Diego Municipal Code section 22.3223, authorizing such execution, and by the CONSULTANT.

I HEREBY CERTIFY I can legally bind Project Design Consultants and that I have read all of this Agreement, this 16 day of July, 2007.

By Gordon K Lutes

Gordon Lutes, P.E.  
Senior Vice President

Ben NCA, CE

I HEREBY APPROVE the form and legality of the foregoing Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

MICHAEL J. AGUIRRE, City Attorney

By \_\_\_\_\_

Deputy City Attorney



File: F07-385  
July 13, 2007  
Page 1 of 13

## EXHIBIT 'A' – SCOPE OF WORK REGENTS ROAD BRIDGE SCOPE OF SERVICES

- Task 1. Preliminary Design
  - Subtask 1.1. Conduct data collection. (PDC)
    - 1.1.1. Site Review. (PDC)
      - 1.1.1.1. Verify existing improvements, utilities, and roadway features.
      - 1.1.1.2. Locate any missing improvements in the field.
    - 1.1.2. Landscape Architecture. (PDC)
      - 1.1.2.1. Review EIR as it pertains to landscape and aesthetic issues.
      - 1.1.2.2. Identify view corridors to preserve.
      - 1.1.2.3. Review site for scenic overlook and parking area.
      - 1.1.2.4. Identify areas for relocation of trail impacted by widening of roadway.
      - 1.1.2.5. Inventory existing improvements and adjacent plant materials.
    - 1.1.3. Surveying. (City)
  - Subtask 1.2. Assemble mapping. (PDC)
    - 1.2.1. Incorporate City – supplied survey information.
  - Subtask 1.3. Prepare roadway/approach design. (PDC)
    - 1.3.1. Prepare 15% plans including:
      - 1.3.1.1. Vertical and horizontal geometry.
      - 1.3.1.2. Earthwork, cut and fill areas and slopes.
      - 1.3.1.3. Location of walls.
      - 1.3.1.4. Recreation parking lot.
    - 1.3.2. Prepare preliminary quantities and cost estimate.
  - Subtask 1.4. Prepare preliminary Landscape Plans. (PDC)
    - 1.4.1. Prepare sections of street and parking area/scenic overlook for design purposes.
    - 1.4.2. Determine locations of trail and walkway system including ADA requirements.
  - Subtask 1.5. Prepare preliminary drainage/water quality studies. (PDC)
    - 1.5.1. Review existing storm drain system.
    - 1.5.2. Determine design flows using methodologies currently required by the City of San Diego.
    - 1.5.3. Determine any scour issues associated with columns using information from FEMA's Flood Insurance Study and Federal Insurance Rate Maps. HEC-RAS or other detailed models will not be used to analyze scour.
    - 1.5.4. Prepare preliminary onsite storm drain system.
    - 1.5.5. Prepare a preliminary WQTR that examines potential BMPs.



- Subtask 1.6. Prepare preliminary traffic studies. (USA)
  - 1.6.1. Preliminary analysis of side street intersections.
- Subtask 1.7. Conduct preliminary geotechnical investigation. (GEOCON)
  - 1.7.1. Review published geologic maps, aerial photographs, in-house documents, and other literature pertaining to the site.
  - 1.7.2. Obtain a County of San Diego Department of Environmental Health Well Permit.
  - 1.7.3. Conduct three Cone Penetration Test soundings.
  - 1.7.4. Prepare a Preliminary Foundation Report (PFR) in accordance with Caltrans Guidelines for Foundation Investigation and Reports.
- Subtask 1.8. Identify bridge design EIR mitigation commitments. (PDC)
- Subtask 1.9. Reserved
- Subtask 1.10. Conduct preliminary architectural analysis.
  - 1.10.1. Prepare conceptual diagrams, concept descriptions, renderings and 3D models for up to four bridge type alternatives. Up to three renderings for each alternative. (SRA)
  - 1.10.2. Coordinate with TYLIN. (SRA)
  - 1.10.3. Prepare 3D Base Models (SRA)
  - 1.10.4. Prepare conceptual renderings. (SRA)
  - 1.10.5. Evaluate nighttime lighting. (SH/SRA)
- Subtask 1.11. Determine all power needs including lighting, traffic signal, irrigation controller, etc and determine utility sources. (SH)
- Subtask 1.12. Prepare preliminary bridge design. (TYLIN)
  - 1.12.1. Conduct a field review of the project site with City of San Diego to observe site conditions and constraints and take photographs. The field review meeting will be attended by the Project Manager and Project Engineer.
  - 1.12.2. Develop four bridge concepts including: engineering Bridge Advance Planning Study drawing showing plan, elevation, and typical section views.
  - 1.12.3. Develop preliminary cost estimates for four concepts.
    - For each design concept, make an order-of-magnitude assessment of the relative costs and required time for design, construction and maintenance.
- Subtask 1.13. Select bridge type. (PDC/TYLIN/SRA)
  - 1.13.1. Rank four bridge design concepts according to aesthetics, function, construction cost, construction time and long-term maintenance. (PDC/TYLIN/SRA)
  - 1.13.2. Perform limited preliminary engineering layout and analysis (TYLIN)
  - 1.13.3. Refine the 3-dimensional computer graphic model for the selected bridge type. (SRA)
  - 1.13.4. Prepare bridge type selection report
  - 1.13.5. Perform quantity take-offs and cost estimate. (TYLIN)
  - 1.13.6. Prepare colorized alternative landscape concepts that compliment the bridge concepts. (PDC)
- Subtask 1.14. Prepare and submit bridge type and basis of design report. (TYLIN/PDC/SRC)



#### Deliverables (Task 1)

- Base map. (PDC)
- Bridge engineering advanced planning studies. (TYLIN)
- Four bridge type concepts including conceptual diagrams and descriptions. (TYLIN)
- One photosimulation and three renderings for up to four bridge concepts. (SRA)
- Bridge type selection report. (PDC/TYLIN/SRA)
- Preliminary cost estimate and take-offs. (TYLIN/PDC/SRA)
- Preliminary traffic analysis. (USA)
- Preliminary 15% roadway plans. (PDC)
- Preliminary drainage/water quality study. (PDC)
- Preliminary landscape concepts. (PDC)
- Preliminary log of test borings. (GEOCON)
- Preliminary foundation report. (GEOCON)
- Basis of design report (TYLIN, PDC, SRA)

#### Assumptions (Task 1)

- City provides surveying and mapping services.
- Costs assume up to four bridge types.
- Bridge engineering costs are based on haunched 5-span, pre-stressed concrete box girder with maximum spans of about 210 feet unless otherwise noted.
- Floodplain analyses are not a part of this Subtask 1.5.
- City will provide 1-foot contour topographic base map.
- Walk-through animations are not included.

#### Task 2.

##### Public Outreach. (KATZ)

- Subtask 2.1. Organize *first roundtable meeting*.
- 2.1.1. Develop list of potential participants/solicit participation.
  - 2.1.2. Schedule roundtable meeting and notify group members.
  - 2.1.3. Coordinate with team to determine what information to discuss at the roundtable meeting.
  - 2.1.4. Prepare PowerPoint presentation, boards, materials needed for roundtable meeting.
  - 2.1.5. Participate in internal planning meetings before the roundtable meeting.
  - 2.1.6. Set up, facilitate and staff roundtable meeting.
  - 2.1.7. Document group's input during meeting and prepare summary report after the meeting, distribute report to team.
- Subtask 2.2. Organize *second roundtable meeting*.
- 2.2.1. Schedule roundtable meeting and notify members of meeting.
  - 2.2.2. Coordinate with team to determine what information to discuss at the roundtable meeting.
  - 2.2.3. Prepare PowerPoint presentation, boards, materials needed for roundtable meeting.
  - 2.2.4. Participate in internal planning meetings before the roundtable meeting.
  - 2.2.5. Set up, facilitate and staff roundtable meeting.





- 2.2.6. Document group's input during meeting and prepare summary report after the meeting, distribute report to team.
- Subtask 2.3. Organize *third roundtable meeting*.
  - 2.3.1. Schedule roundtable meeting and notify members of meeting.
  - 2.3.2. Coordinate with team to determine what information to discuss at the roundtable meeting.
  - 2.3.3. Prepare PowerPoint presentation, boards, materials needed for roundtable meeting.
  - 2.3.4. Set up, facilitate and staff roundtable meeting.
  - 2.3.5. Participate in internal planning meetings before the roundtable meeting.
  - 2.3.6. Document group's input during meeting and prepare summary report after the meeting, distribute report to team.
- Subtask 2.4. Organize *fourth roundtable meeting*.
  - 2.4.1. Schedule roundtable meeting and notify members of meeting.
  - 2.4.2. Coordinate with team to determine what information to discuss at the roundtable meeting.
  - 2.4.3. Prepare PowerPoint presentation, boards, materials needed for roundtable meeting.
  - 2.4.4. Participate in internal planning meetings before the roundtable meeting.
  - 2.4.5. Set up, facilitate and staff roundtable meeting.
  - 2.4.6. Document group's input during meeting and prepare summary report after the meetings, distribute report to team.
- Subtask 2.5. Organize *first open house*.
  - 2.5.1. Schedule open house and coordinate logistics, including finding a location for the open house.
  - 2.5.2. Draft text *inviting community members to the open house* to include in the newsletter.
  - 2.5.3. Prepare all materials, boards, presentations.
  - 2.5.4. Coordinate with team to ensure that simulations/drawings of the bridges are prepared.
  - 2.5.5. Participate in internal planning meetings before the open house.
  - 2.5.6. Set up and staff the open house session.
  - 2.5.7. Document community's input on the designs and prepare a summary report, distribute report to team.
- Subtask 2.6. Organize *second open house*.
  - 2.6.1. Schedule open house and coordinate logistics, including finding a location for the open house.
  - 2.6.2. Draft text *inviting community members to the open house* to include in the newsletter.
  - 2.6.3. Prepare all materials, boards, presentations.
  - 2.6.4. Coordinate with team to ensure that simulations/drawings of the bridge is prepared.
  - 2.6.5. Participate in internal planning meeting before the open house.



- 2.6.6. Set up and staff the open house session.
- 2.6.7. Document community's input on the design and prepare a summary report, distribute report to team.
- Subtask 2.7. Organize speakers bureau and UCPG presentations
  - 2.7.1. Identify and schedule up to six presentations to community groups during the design phase, in addition to two presentations at the UC Planning Group.
  - 2.7.2. Develop one PowerPoint presentation and prior to presentations, tailor the PowerPoint to the specific groups.
  - 2.7.3. Review presentation and speaking points with the team/presenter.
  - 2.7.4. Staff the presentations and take notes on the community's input and questions.
  - 2.7.5. Prepare summary reports of the presentations and community's input, distribute summary reports to team.
- Subtask 2.8. Organize CEQA scoping meeting/open house.
  - 2.8.1. Schedule scoping meeting/open house and coordinate logistics, including finding a location, drafting and placing ads in local publications.
  - 2.8.2. Draft, produce and mail invitation, work with project team to ensure all required noticing is completed.
  - 2.8.3. Prepare all materials, boards, presentations.
  - 2.8.4. Coordinate with team to ensure that simulations/drawings of the bridge design is prepared.
  - 2.8.5. Participate in internal planning meetings before the scoping meeting/open house, provide meeting facilitation, coordinate with all vendors.
  - 2.8.6. Set up and staff the scoping meeting/open house.
  - 2.8.7. Document community's input and prepare a summary report, distribute report to team.
- Subtask 2.9. Informational Materials.
  - 2.9.1. Draft, produce and mail up to two newsletters during the design process.
  - 2.9.2. Update the existing fact sheet and frequently asked questions document, coordinate printing and distribution, post on the project Web site.
  - 2.9.3. Draft and distribute two template articles to area newsletters and newspapers during the design phase, follow up with editors to encourage placement of articles.
  - 2.9.4. Draft and distribute up to three postcard mailings to notify community members of milestone events during the design phase.
- Subtask 2.10. Mailing List Maintenance.
  - 2.10.1. Review existing mailing and e-mail lists to ensure most up-to-date contact information is included.
  - 2.10.2. Purchase additional mailing lists, if necessary.
- Subtask 2.11. Post information on City Web site.
  - 2.11.1. Draft updates throughout the design phase to post on the City's Web site.
  - 2.11.2. Coordinate posting announcements regarding each of the four roundtable discussions, the two open houses and the scoping meeting.



- 2.11.3. Respond to e-mail inquiries that come in through the City's Web site.
- Subtask 2.12. Coordinate community relations.
  - 2.12.1. Fulfill requests, provide information and respond to *inquiries from community members, interested parties, stakeholders, policy makers, elected officials and the media in a timely and efficient manner. As needed, meet with interested parties to provide information (up to five meetings).*
  - 2.12.2. Phone conferences and email follow-up with project team members regarding community relations issues (requests from citizens, civic and community groups, property owners, etc.).

#### Deliverables (Task 2)

- Summaries of roundtables and open houses.
- Up to two project newsletters.
- PowerPoint for speakers bureau.
- Up to three postcard notifications.
- *Updated project fact sheet and frequently asked questions document.*
- Up to two template articles distributed to area newsletters/newspapers.
- Updated mailing list.
- Updated City Web site.

#### Assumptions (Task 2)

- Roundtable discussions: No meeting room costs, costs include presentation materials, equipment rentals, refreshments, and costs for mailing letters to participants.
- Open houses: Up to \$250 room rental expense, other costs include refreshments, event supplies, equipment rentals, ad design and placement, and event supplies. No costs for notification are included in the task – *the newsletters will be the main method of notification.*
- CEQA scoping meeting/open house: Assumes up to \$400 for room rental fee and costs for rental equipment, court reporter, refreshments, materials, signage, meeting supplies. Notification for meeting will use an oversized postcard and costs include design, printing, mailing, and postage.
- Informational materials: Costs include graphic design, printing, photography (as needed), postage and mailing services for nearly 19,000 copies of the newsletters. Additional budget is included for up to three postcard mailings for up to 250 people each time a milestone or event occurs. Printing, design, mailing labels and postage are the hard costs for these postcards. For changes to existing fact sheets, budget will be allocated for graphic design and printing fees. The first revision will consist of 1,000 copies for the fact sheet and the FAQ document.
- Mailing list maintenance: Up to \$500 to purchase updated database sections.

#### Task 3.

##### Final Design.

- Subtask 3.1. Conduct final geotechnical investigations. (GEOCON)
  - 3.1.1. Bridge.



- 3.1.1.1. Obtain a County of San Diego Department of Environmental Health well permit.
- 3.1.1.2. Drill approximately 3 to 5 borings at support locations not covered by the preliminary CPTs. The borings will be drilled with mud rotary equipment.
- 3.1.1.3. Perform laboratory tests on selected soil samples to evaluate unit weight, water content, pH, resistivity, soluble sulfate content, chloride ion content, grain size, shear strength, consolidation, expansion, pavement support and compaction characteristics of the prevailing soils.
- 3.1.1.4. Prepare a Final Foundation Report (FR) *presenting our findings and our conclusions* and recommendations in accordance with Caltrans Guidelines for Foundation Investigation and Reports. A Log of Test Borings in Caltrans format would also be provided.
- 3.1.2. Roadway/retaining walls.
  - 3.1.2.1. Excavate approximately 5 backhoe trenches along the proposed alignment to evaluate the thickness of topsoil and alluvium that will require remedial grading and evaluate the mapped landslide.
  - 3.1.2.2. Perform laboratory tests on selected soil samples to evaluate unit weight, moisture content, R-value, shear strength, expansion, and compaction characteristics of the prevailing soils.
  - 3.1.2.3. Prepare a Geotechnical Design Report (GDR) and a Log of Test Borings (LOTB) sheet in accordance with Caltrans guidelines.
- Subtask 3.2. Conduct traffic engineering design. (USA)
  - 3.2.1. Determine signing and striping requirements.
  - 3.2.2. Conduct traffic counts.
  - 3.2.3. Prepare cost estimates.
  - 3.2.4. Conduct a signal warrant analysis.
  - 3.2.5. Design new traffic signals.
- Subtask 3.3. Prepare Final Traffic Noise Abatement Design. (PB)
  - 3.3.1. Inventory affected homes.
  - 3.3.2. Using the final design elevations and locations of the roadway and bridge, prepare a detailed model to predict the future traffic noise levels and noise contours at each of the impacted residential receivers.
  - 3.3.3. Identify lot by lot exterior and interior noise attenuation requirements.
  - 3.3.4. Rerun the model with different noise abatement scenarios: (1) sound walls within the roadway right-of-way; (2) sound walls at the property line; and (3) sound insulation of residences.



- 3.3.5. Identify the feasible and reasonable noise abatement for the impact residential receivers.
- 3.3.6. Prepare final design recommendations for noise abatement.
- Subtask 3.4. Design bridge lighting. (SRA/SH)
  - 3.4.1. Model lighting impacts on canyon. (SH)
  - 3.4.2. Determine minimum lighting required for traffic safety pursuant to: IESNA Recommended Practices for Roadways and local codes and ordinances. (SH)
  - 3.4.3. Establish overall bridge lighting design and approach. (SRA)
- Subtask 3.5. Prepare roadway and approach design. (PDC)
  - 3.5.1. Prepare 30% plans.
    - 3.5.1.1. Prepare title sheet and notes.
    - 3.5.1.2. Prepare typical sections and key map.
    - 3.5.1.3. Prepare plan and profile.
    - 3.5.1.4. Prepare grading plan.
    - 3.5.1.5. Prepare utilities plan.
    - 3.5.1.6. Prepare drainage plan.
    - 3.5.1.7. Prepare wall alignment sheet.
    - 3.5.1.8. Driveway plan and profile sheet.
    - 3.5.1.9. Prepare parking layout plan.
    - 3.5.1.10. Prepare pathway and stairs plan.
    - 3.5.1.11. Prepare resurfacing plan.
    - 3.5.1.12. Prepare estimate of probable construction cost.
    - 3.5.1.13. Prepare landscape plans.
  - 3.5.2. Prepare 60% plans, estimates and specifications (PS&E) to respond to City comments on 30% Plans. (PDC)
    - 3.5.2.1. Prepare Traffic Control Plans.
    - 3.5.2.2. Prepare Specifications.
    - 3.5.2.3. Prepare Landscape Plans.
  - 3.5.3. Prepare 90% PS&E to respond to City comments on 60% plans. (PDC)
  - 3.5.4. Prepare 100% PS&E to respond to City comments on 90% plans. (PDC)
  - 3.5.5. Prepare Final plan mylars based on City comments or 100% plans. (PDC)
  - 3.5.6. Independent Construction Cost Estimate (TBD)
- Subtask 3.6. Prepare draft architectural design report providing recommendations for member shapes and proportions, materials, finishes, colors and lighting. (TYLIN/SRA)
- Subtask 3.7. Provide support for biological resource permit process including construction descriptions and impact area calculations. (TYLIN)
- Subtask 3.8. Prepare final bridge design. (TYLIN/SRA/SH)
  - 3.8.1. Prepare 30% PS&E.
    - 3.8.1.1. Develop typical plans, sections and elevations that indicate dimensions and arrangement of stair, wall, walk, guardrail and handrail components. (SRA)
    - 3.8.1.2. Prepare a written matrix of bridge materials, finishes, and colors. (SRA)



- 3.8.1.3. Coordinate lighting design elements. (SRA)
- 3.8.1.4. Complete bridge alignment traverse and profile computations. (TYLIN)
- 3.8.1.5. Develop the Bridge General Plan drawing showing structure plan, elevation, typical section and structure type. (TYLIN)
- 3.8.1.6. Update the project cost estimate based on preliminary quantity take-offs. (TYLIN)
- 3.8.2. Prepare 60% PS&E. (TYLIN/SRA/SH)
  - 3.8.2.1. Update plans to respond to City comments on 30% plans.
  - 3.8.2.2. Develop draft technical construction specifications.
  - 3.8.2.3. Prepare detailed quantity takeoffs based on unchecked details.
  - 3.8.2.4. Update cost estimates based on unchecked details.
- 3.8.3. Prepare 90% PS&E. (TYLIN/SRA/SH)
  - 3.8.3.1. Update plans to respond to City comments on 60% plans.
  - 3.8.3.2. Perform independent check and constructability review of the bridge design and plans and make appropriate revisions. The independent check will be conducted based only on the 60% bridge plans without the use of the designer's structural computations. The check engineer will prepare an independent set of structural check computations to substantiate the details shown on the plans. The check engineer will prepare a memorandum to the designer with all comments clearly stated and will prepare a color-coded set of check plans and will perform a back-check to ensure that all comments are satisfactorily addressed. (TYLIN)
  - 3.8.3.3. Perform an independent check of all quantity take-offs and resolve differences within accepted tolerances. (TYLIN)
  - 3.8.3.4. Prepare final technical construction specifications. (TYLIN)
  - 3.8.3.5. Update the cost estimates using checked quantity take-offs. (TYLIN)
  - 3.8.3.6. Respond to comments from the independent bridge check and reviewing agencies, make revisions to the plans and resubmit to PDC. (TYLIN)
- 3.8.4. Prepare 100% PS&E. (TYLIN/SRA/SH)
  - 3.8.4.1. Respond to and make required revisions by reviewing agencies. (TYLIN/SRA/SH)
  - 3.8.4.2. Produce a refined 3-dimensional computer graphic model of the bridge based on the 100% PS&E set. Create rendered views from



- a maximum of three vantage points for the selected bridge alternative. (SRA)
    - 3.8.4.3. Prepare a Resident Engineer Pending file including all design information necessary for reference during construction. (TYLIN)
  - 3.8.5. Architectural design for increased fenestration (SRA)
- Subtask 3.9. Right of Way Engineering. (PDC)
  - 3.9.1. Purchase 17 Title Reports.
  - 3.9.2. Boundary Analysis.
  - 3.9.3. Prepare D-Sheet maps.
  - 3.9.4. Prepare B-Sheet maps.
  - 3.9.5. Prepare legal description.

#### Deliverables (Task 3)

- Plans, sections and elevations of architectural bridge elements. (SRA)
- Written matrix of bridge materials, colors and textures with available samples. (SRA)
- CSI format specifications for architectural bridge elements. (SRA)
- Final bridge renderings. (SRA)
- Bridge Cost Estimate (30, 60, 90, and 100%) (TYLIN)
- Draft Technical Construction Specifications (60%). (TYLIN)
- Bridge Final Technical Specifications (90% and 100%). (TYLIN)
- Final Bridge Engineer's Estimate. (TYLIN)
- Structural computations, design and check. (TYLIN)
- Quantity computations. (TYLIN)
- Responses to independent check and agency review comments (TYLIN)
- Resident Bridge Engineer's Pending File. (TYLIN)
- Drainage report and WQTR (four copies). (PDC)
- Roadway and Approach Design Plans and Estimate (30, 60, 90, and 100%). (PDC)
- 30% Landscape Plans (30, 60, 90, and 100%). (PDC)
- Final Foundation Report (FR). (GEOCON).
- Geotechnical Design Report (GDR). (GEOCON).

#### Assumptions (Task 3)

- Up to 10 plan sets of plans will be submitted to the City for the 30, 60, 90 and 100 % versions. One original and one electronic version of final mylars will be submitted.
- Up to 25 copies of 90% bridge plans.
- Assumes Caltrans will not charge City for encroachment permit.
- The City understands that the requirements of the ADA will be subject to various and possibly contradictory interpretations. The Consultant cannot and does not warrant and guarantee that the Professional services will comply with all interpretations of the ADA requirements.



- The following design criteria and standards are assumed as part of the bridge design:
  - A. Design Criteria.
    - 1. The final structure type, span layout, span lengths and aesthetic treatments shall be determined based on a bridge type selection study in coordination with the community and the City of San Diego.
    - 2. The bridge facilities shall comply with the Americans with Disabilities Act (ADA) and Title 24 of the California Code of Regulations.
    - 3. Bridge railings shall provide suitable screening over the railway.
    - 4. Bridge seismic design shall conform to the Caltrans Seismic Design Criteria, Version 1.4, June 2006.
  - B. Design Standards  
 Project development shall conform to the applicable provisions and guidelines of the current editions of the following, in effect at the initiation of design:
    - 1. City of San Diego Division of Engineering and Capital Projects (SDDECP) DI-33-95.11, Drafting Standards.
    - 2. Manual for Preparation of Land Development and Public Improvement Plans, current edition.
    - 3. SDDECP Manual No. 1160-5, "As Built Procedures".
    - 4. City of San Diego Standard Drawings, Document #769846, dated 2000.
    - 5. Caltrans Highway Design Manual.
    - 6. Standard Specifications for Public Works Construction, 2000 Edition.
    - 7. Caltrans 2006 Standard Plans and Standard Specifications.
    - 8. Caltrans Manual of Traffic Controls for Construction and Maintenance Work Zones, current edition.
    - 9. Caltrans Bridge Design Aids, Bridge Design Details Manuals, and Memo to Designers with all interims.
    - 10. AASHTO LRFD Bridge Design Specifications (for design of the bridge, excluding foundations).
    - 11. Caltrans Bridge Design Specifications April 2000 LFD Version (for design of the bridge foundations).
    - 12. City of San Diego Park and Recreation Department Guide to Park Design and the City of San Diego Landscape Technical Manual.
    - 13. City of San Diego Streetscape Manual.
    - 14. City of San Diego Street Design Manual.
    - 15. Regional Water Quality Control Board regulations.
    - 16. Railroad requirements.
    - 17. Recommendations set forth in the Foundation Report for the project.
    - 18. Requirements of all project permits.
    - 19. All technical reports and construction drawings shall be in English units in accordance with standards adopted by Caltrans.
- Bridge engineering costs are based on a haunched 5-span prestressed concrete box girder with maximum spans of about 210 feet similar to the concept identified in the original EIR.
- Changes to the project approach; site layout and design requirements are not anticipated once final design has begun.
- Floodplain analyses are not included as part.
- Includes 17 potential ROW acquisitions.
- Artifact curation assumes 10 boxes.





- Excludes new travel forecast and LOS analysis.

#### Task 4.

##### Project Management. (PDC)

- Subtask 4.1. Coordinate subconsultants.
- Subtask 4.2. Perform QA/QC.
- Subtask 4.3. Oversee financial administration.
- Subtask 4.4. Maintenance of Design Team's Website
- Subtask 4.5. Coordination with Environmental Consultant

##### Deliverables (Task 4)

- Monthly invoices and regular progress reports.

##### Assumptions (Task 4)

- Project management is based on a 20 month timeframe.

#### Task 5.

##### Meetings and Hearings. (ALL)

- Subtask 5.1. Meetings and hearings. (PDC)
- Subtask 5.2. Reserved
- Subtask 5.3. Meetings and hearings. (GEOCON)
- Subtask 5.4. Meetings and hearings. (KATZ)
- Subtask 5.5. Reserved
- Subtask 5.6. Meetings and hearings. (PB)
- Subtask 5.7. Meetings and hearings. (SH)
- Subtask 5.8. Meetings and hearings. (TYLIN)
- Subtask 5.9. Meetings and hearings. (USA)
- Subtask 5.10. Meetings and hearings. (SRA)
- Subtask 5.11. Reserved

##### Deliverables (Task 5)

- None.

##### Assumptions (Task 5)

- Meeting time is based on assumptions identified in the cost spreadsheets accompanying this scope.

#### Task 6.

##### Bid Support

- Subtask 6.1. Bid Support (PDC)
- Subtask 6.2. Bid Support. (GEOCON)
- Subtask 6.3. Bid Support. (Reserved)
- Subtask 6.4. Bid Support. (PB)
- Subtask 6.5. Bid Support. (SH)
- Subtask 6.6. Bid Support. (TYLIN)
- Subtask 6.7. Bid Support. (USA)
- Subtask 6.8. Bid Support (Reserved)

##### Deliverables (Task 6)

- None.

##### Assumptions (Task 6)

- Excludes addendums



## Task 7.

## EIR Support

Subtask 7.1 Traffic - Prepare traffic report and provide support to EIR Consultant (USA)

Assumptions

- City staff runs new model based on Series 11 for project and alternatives.
- The following three scenarios will be analyzed: (1) No bridge or Genesee widening, (2) Bridge without Genesee widening, and (3) Bridge and Genesee widening.
- Excludes full analysis of the impacts of deleting Genesee widening from the Community Plan but includes general evaluation of the consequences for informational purposes.
- Analysis includes up to 26 intersections and intervening roadway segments.
- Peak hour volumes will be established by City staff in coordination with USA.
- Conceptual intersection layouts would be limited to total of six.
- Excludes cost of traffic counts.

File: F07-386  
 July 13, 2007  
 Page 1 of 8

## EXHIBIT 'A' – SCOPE OF WORK LIMITED ROADWAY CHANGES SCOPE OF SERVICES

- Task 1. Preliminary Design
  - Subtask 1.1. Conduct data collection. (All LRC) (PDC)
    - 1.1.1. Conduct data collection.
    - 1.1.2. Field review.
    - 1.1.3. Review EIR as it pertains to landscape and aesthetic issues.
    - 1.1.4. Prepare preliminary site plan for data collection.
    - 1.1.5. Develop opportunities and constraints map
  - Subtask 1.2. Assemble mapping. (All LRC) (PDC)
    - 1.2.1. Incorporate City-supplied survey information.
  - Subtask 1.3. Prepare roadway/approach design. (All LRC) (PDC)
    - 1.3.1. Prepare title sheet and typicals. (common)
    - 1.3.2. Prepare plans and profiles.
    - 1.3.3. Prepare estimate of PCC.
  - Subtask 1.4. Prepare landscape plans. (All LRC) (PDC)
    - 1.4.1. Prepare sections of street for design purposes.
    - 1.4.2. Review pedestrian connections.
    - 1.4.3. Colorize each of the plans in Photoshop for presentation purposes.
    - 1.4.4. Research concrete treatments for retaining walls. (SR/52 and Regents Rd. only)
  - Subtask 1.5. Prepare preliminary drainage/water quality analysis. (All LRC) (PDC)
  - Subtask 1.6. Prepare preliminary traffic analysis. (USA)
    - 1.6.1. Evaluate ramp signal. (SR 52 interchanges only)
    - 1.6.2. Identify signing and striping requirements.
    - 1.6.3. Recommend signal modification.
    - 1.6.4. Evaluate ramp meter signals. (SR 52 interchanges only)
    - 1.6.5. Prepare preliminary cost estimates/specials.
    - 1.6.6. Coordinate with SDG&E and landscape architect.
    - 1.6.7. Evaluate lighting. (SR 52 interchanges only)
    - 1.6.8. Coordinate bridge conduit. (SR 52 interchanges only)
    - 1.6.9. Evaluate off ramp and park access. (SR 52 interchanges only)
  - Subtask 1.7. Conduct preliminary geotechnical/hazmat investigation. (All LRC) (GEOCON)
    - 1.7.1. Review published geologic maps, aerial photographs, in-house documents and other literature pertaining to the site to aid in evaluating geologic conditions and hazards that may be present.
    - 1.7.2. Prepare a Preliminary Foundation Report (PFR) in accordance with Caltrans guidelines.



- Subtask 1.8. Identify bridge design EIR mitigation commitments. (All LRC) (PDC/ SH)
- Subtask 1.9. Reserved
- Subtask 1.10. Prepare preliminary bridge design. (SR 52 interchanges only) (TYLIN)
- 1.10.1. Field review. (SR 52 interchanges only)
- 1.10.2. Prepare General Plan. (SR 52 interchanges only)
- 1.10.3. Prepare General Plan cost estimate. (SR 52 interchanges only)
- 1.10.4. Add/relocate roadway luminaires. (Governor/Genesee intersection only)
- Subtask 1.11. Prepare Preliminary Retaining Wall Design. (SR 52/Regents Rd. interchange only) (TYLIN/SRA)
- 1.11.1. Develop a concept for the retaining walls that will subsequently be developed into construction plans. (TYLIN)
- 1.11.2. Conduct a field review of the project site with City staff to observe site conditions and constraints and take photographs. (TYLIN)
- 1.11.3. Prepare conceptual diagrams and concept descriptions retaining wall alternatives. (TYLIN)
- 1.11.4. Develop a maximum of three retaining wall design concepts including a 3-dimensional computer graphic model of the retaining walls and surrounding area with renderings sufficient to graphically illustrate the concepts in the form of 3-D vignettes/renderings, plans, sections, and/or elevations. (SRA)
- 1.11.5. Assist in summarizing the conceptual design studies and make recommendations for final retaining wall design concept. (SRA)

#### Deliverables (Task 1)

- Base Map. (PDC)
- Bridge Engineering Advanced Planning Studies. (TYLIN)
- Preliminary cost estimate and take-offs. (TYLIN)
- Preliminary traffic analysis. (USA)
- Preliminary 15% roadway plans. (PDC)
- Preliminary drainage/water quality study. (PDC)
- Preliminary landscape concepts. (PDC)
- Preliminary Log of Test Borings. (LOTB). (GEOCON)
- Preliminary Foundation Report. (PFR). (GEOCON)
- Preliminary General Bridge Plan. (TYLIN)
- General Bridge Plan cost estimate. (TYLIN)

#### Assumptions (Task 1)

- City provides surveying services.
- Floodplain analyses are not a part of this Subtask 1.5.
- City will provide 1-foot contour topographic base map.

Task 2. Reserved



- Task 3. Final Design
- Subtask 3.1. Conduct final geotechnical investigations. (All LRC) (GEOCON)
- 3.1.1. Review published geologic maps, aerial photographs, in-house documents and other literature pertaining to the site to aid in evaluating geologic conditions and hazards that may be present.
  - 3.1.2. Obtain a County of San Diego Department of Environmental Health well permit.
  - 3.1.3. Obtain Caltrans' right-of-way permits, if necessary. (SR 52 interchanges only)
  - 3.1.4. Drill two borings with high torque hollow stem auger equipment, one at each abutment to examine and sample the prevailing soil conditions. Advance three hand auger borings along the adjacent widening alignment. (SR 52 interchanges only)
  - 3.1.5. Drill three borings with track-mounted, limited-access equipment on the embankment slopes associated with retaining wall location at SR 52/Regents Rd. interchange to depths of approximately 20 feet to examine and sample the prevailing soil conditions.
  - 3.1.6. Advance two hand auger borings/test pits. (Governor/Genesee intersection only)
  - 3.1.7. Detect for the presence of hydrocarbon using PID equipment. (Governor/Genesee intersection only)
  - 3.1.8. Prepare a letter report regarding the pavement design. (Governor/Genesee intersection only)
  - 3.1.9. Provide additional recommendations if hydrocarbon exists. (Governor/Genesee intersection only)
- Subtask 3.2. *Conduct traffic engineering design. (All LRC) (USA)*
- Subtask 3.3. Design lighting. (All LRC) (SH)
- Subtask 3.4. Prepare roadway and approach design. (PDC)
- 3.4.1. Prepare 30% plans. (All LRC)
    - 3.4.1.1. Conduct field survey.
    - 3.4.1.2. Assemble title sheet and notes.
    - 3.4.1.3. Prepare typical sections.
    - 3.4.1.4. Prepare plan and profile sheets.
    - 3.4.1.5. Prepare grading plans.
    - 3.4.1.6. Prepare existing utility plans.
    - 3.4.1.7. Prepare preliminary drainage plans.
    - 3.4.1.8. Prepare traffic control plans.
    - 3.4.1.9. Prepare estimate of probable construction cost.
    - 3.4.1.10. Assemble and submit plans.
    - 3.4.1.11. Prepare preliminary landscape plans.
    - 3.4.1.12. Prepare driveway plan and profile (Governor/Genesee intersection only)
  - 3.4.2. Prepare 60% roadway and approach plans, specifications and estimates. (PS&E) (All LRC)
    - 3.4.2.1. Incorporate comments on 30% PS&E.
    - 3.4.2.2. Prepare estimates and specifications.
  - 3.4.3. Prepare 90% PS&E (All LRC)
    - 3.4.3.1. Incorporate comments on 60% PS&E.
  - 3.4.4. Prepare 100% PS&E



- 3.4.4.1. Incorporate comments on 90% PS&E.
- 3.4.5. Prepare final plan mylars.
- 3.4.5.1. Incorporate comments on 100% PS&E.
- Subtask 3.5. Reserved
- Subtask 3.6. Prepare final bridge design. (SR 52 interchanges only) (TYLIN/SYSKA)
- 3.6.1. Prepare 30% PS&E.
  - 3.6.1.1. Update General Plan drawing showing structure plan, elevation, typical section and structure type.
  - 3.6.1.2. *Update the project cost estimate based on preliminary quantity take-offs.*
- 3.6.2. Prepare 60% PS&E.
  - 3.6.2.1. Incorporate comments on 30% PS&E.
  - 3.6.2.2. Complete design and plans for the bridge structure (unchecked details).
  - 3.6.2.3. Develop draft technical construction specifications.
  - 3.6.2.4. Perform detailed quantity takeoffs based on unchecked details.
  - 3.6.2.5. Update the cost estimates using unchecked quantity takeoffs.
- 3.6.3. Prepare 90% PS&E.
  - 3.6.3.1. Incorporate comments on 60% PS&E.
  - 3.6.3.2. Perform independent check and constructability review of the bridge design and plans. The independent check will be conducted based only on the 60% bridge plans without the use of the designer's structural computations. The check engineer will prepare an independent set of structural check computations to substantiate the details shown on the plans. The check engineer will prepare a memorandum to the designer with all comments clearly stated and will prepare a color-coded set of check plans and will perform a back-check to ensure that all comments are satisfactorily addressed.
  - 3.6.3.3. Perform an independent check of all quantity take-offs and resolve differences within accepted tolerances.
  - 3.6.3.4. Prepare final technical construction specifications.
  - 3.6.3.5. Update the cost estimates using checked quantity take-offs.
  - 3.6.3.6. Respond to comments from the independent structure check and reviewing agencies, make revisions to the plans.
- 3.6.4. Prepare 100% PS&E.
  - 3.6.4.1. Incorporate comments on 90% PS&E.
  - 3.6.4.2. Update all quantity takeoffs and prepare the final cost estimates for the structures. Determine the number of working days to be allowed for structure construction.



- 3.6.4.3. Prepare a Resident Engineer Pending file including all design information necessary for reference during construction.
- 3.6.4.4. Process the final PS&E in accordance with Caltrans Office of Special Funded Projects (OSFP) procedures. (SR 52/Regents Rd. retaining wall only)
- Subtask 3.7. Determine engineer power needs. (All LRC) (SH)
- Subtask 3.8. Reserved
- Subtask 3.9. Caltrans Permit Processing. (SR 52 interchanges only) (TYLin)
  - 3.9.1.1. Prepare a Permit Engineering Evaluation Report (PEER), including: Advance Planning Study, Preliminary Foundation Report, Structure Advance Planning Study checklist, design memo, cost estimate, and PEER form.
  - 3.9.1.2. Pre-Type Selection including: Draft Site Data Submittal and Foundation Boring Plan.
  - 3.9.1.3. Type Selection including Type Selection Report, approved site data submittal with attachments, General Plan, Draft Foundation Plan and Preliminary Foundation Report.
  - 3.9.1.4. Post-Type Selection including type selection review meeting summary, updated General Plan Estimate, updated General Plan, 65% unchecked details, unchecked structure plans (paper and electronic), draft road plans and draft, Final Foundation Report.
  - 3.9.1.5. Initial PS&E including structure plans (paper and electronic), design calculations, check calculations, structure special provisions, memo to Specification Engineer, cost estimate, quantity calculations and summary sheets, working day schedule, Final Foundation Report, road plans, road special provisions, and consultant quality control statement.
  - 3.9.1.6. Intermediate PS&E including resubmittal of all items in Initial PS&E.
  - 3.9.1.7. Final PS&E including final structure plans (paper and electronic) and Resident Engineers pending file.
- Subtask 3.10. Prepare Traffic Noise Abatement Report. (SR 52 interchanges only) (Parsons Brinckerhoff)
  - 3.10.1. In accordance with FHWA and Caltrans requirements prepare a traffic noise abatement study including:
    - 3.10.1.1. Conduct measurements to determine the existing noise levels in the study area.
    - 3.10.1.2. Model the future traffic noise levels at noise sensitive receivers and recreational locations.
    - 3.10.1.3. Identify feasible and reasonable noise abatement measures.
    - 3.10.1.4. Identify feasible and reasonable noise abatement measures.



- 3.10.1.5. Provide the location, height, and length of sound walls that are recommended as noise abatement measures for final design.

Deliverables (Task 3)

- 30% roadway PS&E. (PDC)
- 60% roadway PS&E. (PDC)
- 90% roadway PS&E. (PDC)
- 100% roadway PS&E. (PDC)
- *Final roadway plan mylars.* (PDC)
- GIS Biology resource layers.
- 30% bridge PS&E. (TYLIN)
- 60% bridge PS&E. (TYLIN)
- 90% bridge PS&E. (TYLIN)
- 100 % bridge PS&E. (TYLIN)
- *Final bridge plan mylars.* (TYLIN)
- Structural calculations. (TYLIN)
- Quantity calculations. (TYLIN)
- Final Engineer's Estimate. (TYLIN)
- Resident Engineer's Pending File. (TYLIN)
- A Final Foundation Report (FR). (GEOCON)
- A letter report presenting findings and conclusions regarding the geotechnical aspects of designing and constructing the proposed improvement. (GEOCON)
- A letter presenting information related to hazard materials, if present. (GEOCON)

Assumptions (Task 3)

- The level of effort for the bridge structures associated with the SR 52 interchanges are based on widening the existing multi-span reinforced concrete slab bridges with lengths of approximately 155' and 111', respectively. The level of effort for the SR-52 retaining walls are based on 5' high x 370' long walls consisting of Caltrans modified Type 1 walls under the existing SR-52 undercrossings, and Caltrans Standard Type 1 walls outside the bridge limits.
- Up to 10 plan sets will be submitted to the City for the 30, 90 and 100% versions. One original and one electronic version of final mylars will be submitted.
- Up to 25 sets of 90% bridge plans.
- City will assure a signature of the property owner for the well permit application.
- Assumes interchange improvements will qualify for Encroachment Permit from Caltrans.
- Right of entry and associated fees if required will be granted and paid by the City.
- All survey support is provided by the City.
- The plans for all of the LRC will be combined into a single set of plans
- The Caltrans Project Initiation Document for the SR-52 tieback retaining walls is assumed to be a PEER. A PSR/PR is not included.



- It is assumed the existing bridge structures at the SR 52 interchanges will not be retrofitted.
- All technical reports and construction drawings shall be in English units in accordance with standards adopted by Caltrans.
- The following design criteria and standards are assumed as part of the bridge design:

A. Design Criteria

1. The bridge facilities shall comply with the Americans with Disabilities Act (ADA) and Title 24 of the California Code of Regulations.
2. Bridge seismic design shall conform to the Caltrans Seismic Design Criteria, Version 1.4, June 2006.
3. Structures in Caltrans right-of-way shall conform to the procedures outlined in OSFP Manual.

B. Design Standards

1. City of San Diego Division of Engineering and Capital Projects (SDDECP) DI-33-95.11, Drafting Standards.
2. Manual for Preparation of Land Development and Public Improvement Plans, current edition.
3. SDDECP Manual No. 1160-5, "As Built Procedures".
4. City of San Diego Standard Drawings, Document #769846, dated 2000.
5. Caltrans Highway Design Manual.
6. Standard Specifications for Public Works Construction, 2000 Edition.
7. Caltrans 2006 Standard Plans and Standard Specifications.
8. Caltrans Manual of Traffic Controls for Construction and Maintenance Work Zones, current edition.
9. Caltrans Bridge Design Aids, Bridge Design Details Manuals, and Memo to Designers with all interims.
10. AASHTO LRFD Bridge Design Specifications (for design of the retaining walls and the bridges, non foundation).
11. Caltrans Bridge Design Specifications April 2000 LFD Version (for design of the bridge foundations).
12. City of San Diego Park and Recreation Department Guide to Park Design and the City of San Diego Landscape Technical Manual.
13. City of San Diego Streetscape Manual.
14. City of San Diego Street Design Manual.
15. Regional Water Quality Control Board regulations.
16. Railroad requirements.
17. Recommendations set forth in the Foundation Report for the project.

- Task 4. Project Management. (PDC)
- Subtask 4.1. Coordinate subconsultants.
  - Subtask 4.2. Conduct QA/QC.
  - Subtask 4.3. Administer financial aspects of the project.
  - Subtask 4.4. Web site maintenance.
  - Subtask 4.5. Coordination with EIR Consultant

Deliverables (Task 4)

- Monthly invoices and progress reports
- Schedule updates



#### Assumptions (Task 4)

- Project management is based on a 20-month time frame

- Task 5. Meetings and Hearings
- Subtask 5.1. Meetings and hearings (PDC)
  - Subtask 5.2. Reserved
  - Subtask 5.3. Meetings and hearings (GEOCON)
  - Subtask 5.4. Meetings and hearings (KATZ)
  - Subtask 5.5. Reserved
  - Subtask 5.6. Meetings and hearings (PB)
  - Subtask 5.7. Meetings and hearings (SH)
  - Subtask 5.8. Meetings and hearings (TYLIN)
  - Subtask 5.9. Meetings and hearings (USA)
  - Subtask 5.10. Meetings and hearings (SRA)
  - Subtask 5.11. Reserved

#### Deliverables (Task 5)

- None

#### Assumptions (Task 5)

- Meeting time is based on assumptions identified in the cost spreadsheets accompanying this scope.

- Task 6. Bid Support
- Subtask 6.1. Bid Support (PDC)
  - Subtask 6.2. Bid Support (GEOCON)
  - Subtask 6.3. Reserved
  - Subtask 6.4. Bid Support (PB)
  - Subtask 6.5. Bid Support (SH)
  - Subtask 6.6. Bid Support (TYLIN)
  - Subtask 6.7. Bid Support (USA)
  - Subtask 6.8. Reserved

#### Deliverables (Task 6)

- None.

#### Assumptions (Task 6)

- None.

000131

**EXHIBIT B**  
**REGENTS ROAD BRIDGE**  
**DESIGN COSTS**  
**Project Design Consultants**

<i>Task Description</i>	<i>Expenses (\$)</i>	<i>Cost Sum (\$)</i>
1.1 Conduct Data Collection	\$394	\$22,930
Subtotal	\$394	\$22,930
1.3 Prepare Roadway/Approach Design	\$400	\$25,754
Subtotal	\$400	\$25,754
1.4 Prepare Preliminary Landscape Plans	\$1,000	\$14,680
Subtotal	\$1,000	\$14,680
1.5 Preliminary Drainage/Water Quality Studies	\$400	\$11,608
Subtotal	\$400	\$11,608
1.8 Identify EIR Mitigation	\$200	\$3,240
Subtotal	\$200	\$3,240
1.13 Select Bridge Type	\$2,000	\$11,360
Subtotal	\$2,000	\$11,360
1.14 Prepare Basis of Design Report	\$0	\$10,680
Subtotal	\$0	\$10,680
2.1.4 Prepare Graphics for Presentation	\$2,000	\$15,350
Subtotal	\$2,000	\$15,350
3.5 Prepare Roadway and Approach Design		\$445,557
Subtotal	\$35,100	\$445,557
3.9 Right-of-way Engineering		\$89,826
Subtotal	\$1,500	\$89,826
4. PROJECT MANAGEMENT		\$363,300
Subtotal	\$0	\$363,300
5.1 Meetings and Hearings		\$57,920
Subtotal	\$0	\$57,920
6.1 Bid Support		\$16,180
Subtotal	\$0	\$16,180
<b>TOTAL PDC TASKS</b>	<b>\$42,794</b>	<b>\$1,088,385</b>

000132

**EXHIBIT B  
REGENTS ROAD BRIDGE  
DESIGN COSTS  
USA**

<i>Task Description</i>	<i>Expenses (\$)</i>	<i>Cost Sum (\$)</i>
1.6 Prepare Preliminary Traffic Studies		\$7,385
Subtotal	\$0	\$7,385
3.2 Conduct Traffic Engineering Design		\$36,370
Subtotal	\$0	\$36,370
5.9 Meetings and Hearings		\$17,280
Subtotal	\$0	\$17,280
6.7 Bid Support		\$3,120
Subtotal	\$0	\$3,120
7.0 EIR Support, Traffic Report		\$57,560
Subtotal	\$0	\$57,560
<b>TOTAL USA TASKS</b>	<b>\$0</b>	<b>\$121,715</b>

**EXHIBIT B  
REGENTS ROAD BRIDGE  
DESIGN COSTS  
GEOCON**

<i>Task Description</i>	<i>Expenses (\$)</i>	<i>Cost Sum (\$)</i>
<b>1.7 Preliminary Geotechnical Investigation</b>	\$4,600	\$8,856
<b>Subtotal</b>	<b>\$4,600</b>	<b>\$8,856</b>
<b>3.1 Conduct Final Geotechnical Investigations</b>		
<b>Subtotal</b>	<b>\$18,400</b>	<b>\$35,604</b>
<b>5.3 Meetings and Hearings</b>		\$1,120
<b>Subtotal</b>	<b>\$0</b>	<b>\$1,120</b>
<b>6.2 Bid Support</b>		\$3,360
<b>Subtotal</b>	<b>\$0</b>	<b>\$3,360</b>
<b>TOTAL GEOCON TASKS</b>	<b>\$23,000</b>	<b>\$48,940</b>

**EXHIBIT B**  
**REGENTS ROAD BRIDGE**  
**DESIGN COSTS**  
**Katz and Associates**

<i>Task Description</i>	<i>Expenses (\$)</i>	<i>Cost Sum (\$)</i>
2.1 Organize First Roundtable Meeting	\$250	\$5,540
Subtotal	\$250	\$5,540
2.2 Organize Second Roundtable Meeting	\$250	\$4,735
Subtotal	\$250	\$4,735
2.3 Organize Third Roundtable Meeting	\$250	\$4,735
Subtotal	\$250	\$4,735
2.4 Organize Fourth Roundtable Meeting	\$250	\$4,735
Subtotal	\$250	\$4,735
2.5 Organize First Open House	\$2,500	\$6,985
Subtotal	\$2,500	\$6,985
2.6 Organize Second Open House	\$2,500	\$10,650
Subtotal	\$2,500	\$10,650
2.7 Organize Speakers Bureau	\$150	\$7,150
Subtotal	\$150	\$7,150
2.8 Organize CEQA Scoping Meeting/Open House	\$6,000	\$16,840
Subtotal	\$6,000	\$16,840
2.9 Informational Materials		
Subtotal	\$23,200	\$37,320
2.10 Mailing List Maintenance	\$500	\$1,925
Subtotal	\$500	\$1,925
2.11 Post Information on City Website	\$3,500	\$8,695
Subtotal	\$3,500	\$8,695
2.12 Coordinate Community Relations	\$950	\$38,300
Subtotal	\$950	\$38,300
5.4 Meetings and Hearings		\$14,825
Subtotal	\$0	\$14,825
6 Bid Support		\$0
Subtotal	\$0	\$0
<b>TOTAL KATZ TASKS</b>	<b>\$40,300</b>	<b>\$162,435</b>

000135

**EXHIBIT B  
REGENTS ROAD BRIDGE  
DESIGN COSTS  
T.Y. LIN**

<i>Task Description</i>	<i>Expenses (\$)</i>	<i>Cost Sum (\$)</i>
1.12. Prepare Preliminary Bridge Design		
Subtotal	\$0	\$122,470
1.13. Select Bridge Type		\$0
Subtotal	\$0	\$96,770
1.14 Prepare and Submit Basis of Design Report		\$2,095
Subtotal	\$0	\$2,095
3.6.Prepare Draft Architectural Design Report		\$15,320
Subtotal	\$0	\$15,320
3.7 Provide Support for Wetland Permit Process		\$15,030
Subtotal	\$0	\$15,030
3.8. Prepare Final Bridge Design		\$0
Subtotal	\$2,100	\$788,985
3.11.7 PUC		\$65,390
Subtotal	\$0	\$65,390
5.8 Meetings and Hearings		\$81,815
Subtotal	\$0	\$81,815
6.6 Bid Support		\$22,480
Subtotal	\$0	\$22,480
<b>TOTAL T.Y. LIN TASKS</b>	<b>\$2,100</b>	<b>\$1,210,355</b>

000136

**EXHIBIT B  
REGENTS ROAD BRIDGE  
DESIGN COSTS  
Safdie Rabines**

Task Description	Expenses (\$)	Cost Sum (\$)
1.10 Conduct Preliminary Architectural Analysis		\$0
Subtotal	\$9,000	\$106,032
1.13 Select Bridge Type	\$500	\$4,090
Subtotal	\$500	\$4,090
3.4 Design Bridge Lighting		
Subtotal	\$0	\$12,000
3.6 Prepare Draft Architectural Design Report		\$11,310
Subtotal	\$0	\$11,310
3.8 Prepare Final Bridge Design		
Subtotal	\$0	\$172,783
5.10 Meetings and Hearings		\$10,545
Subtotal	\$0	\$10,545
6 Bid Support		\$0
Subtotal	\$0	\$0
TOTAL SAFDIE RABINES TASKS	\$9,500	\$316,760



000137

**EXHIBIT B**  
**REGENTS ROAD BRIDGE**  
**DESIGN COSTS**  
**Parsons Brinckerhoff**

<i>Task Description</i>	<i>Expenses (\$)</i>	<i>Cost Sum (\$)</i>
3.3 Prepare Noise Attenuation Specifications	\$1,250	\$49,230
Subtotal	\$1,250	\$49,230
5.6 Meetings and Hearings		\$6,560
Subtotal	\$0	\$6,560
6.4 Bid Support		\$3,280
Subtotal	\$0	\$3,280
<b>TOTAL PARSONS BRINCKERHOFF TASKS</b>	<b>\$1,250</b>	<b>\$59,070</b>

000138

**EXHIBIT B**  
**REGENTS ROAD BRIDGE**  
**DESIGN COSTS**  
**Syska Hennessy**

<i>Task Description</i>	<i>Expenses (\$)</i>	<i>Cost Sum (\$)</i>
<b>Subtotal</b>	<b>\$0</b>	<b>\$1,335</b>
<b>1.11 Determine Engineer Power Needs</b>	<b>\$500</b>	<b>\$15,290</b>
<b>Subtotal</b>	<b>\$500</b>	<b>\$15,290</b>
<b>1.12.7 Quantity Take-offs - Cost Estimate</b>		<b>\$690</b>
<b>Subtotal</b>	<b>\$0</b>	<b>\$690</b>
<b>3.4 Design Bridge Lighting</b>		<b>\$6,890</b>
<b>Subtotal</b>	<b>\$0</b>	<b>\$6,890</b>
<b>3.8 Prepare Final Bridge Design</b>		<b>\$17,130</b>
<b>Subtotal</b>	<b>\$500</b>	<b>\$17,130</b>
<b>5.7 Meetings and Hearings</b>		<b>\$2,220</b>
<b>Subtotal</b>	<b>\$0</b>	<b>\$2,220</b>
<b>6.5 Bid Support</b>		<b>\$2,960</b>
<b>Subtotal</b>	<b>\$0</b>	<b>\$2,960</b>
<b>TOTAL SYSKA HENNESSY TASKS</b>	<b>\$1,000</b>	<b>\$46,515</b>

000139

**EXHIBIT B  
REGENTS ROAD BRIDGE  
DESIGN COSTS  
GRAND TOTAL**

<b>Consultant</b>	<b>Cost</b>
Project Design Consultants	\$1,088,385.00
USA (includes 5% overhead)	\$127,800.75
GEOCON (includes 5% overhead)	\$51,387.00
Katz and Associates (includes 5% overhead)	\$170,556.75
TYLIN (includes 5% overhead)	\$1,270,872.75
SRA (includes 5% overhead)	\$332,597.74
Parsons Brinckerhoff (includes 5% overhead)	\$62,023.50
Syska Hennessy (includes 5% overhead)	\$48,840.75
<b>GRAND TOTAL</b>	<b>\$3,152,464.24</b>

**EXHIBIT B-2  
REGENTS ROAD BRIDGE  
DESIGN COSTS  
MEETING TIME ALLOCATION**

Meeting/Hearing Description	Hours by Staff Level with Billing Rate																		Total Hours
	Total Number	Hours per Meeting	PDC				GEOCON	Katz		PB	SRA		Syska	TYLIN		USA			
			Principal Engineer	Project Manager	Senior Engineer	Project Planner	Senior Project Engineer	Principal	Senior Acct. Executive	Lead roles	Vibration Specialist	Principal	Project Manager	Principal	Principal Engineer	Senior Bridge Engineer	Principal	Senior Project Manager	
			\$190	\$165	\$140	\$100	\$140	\$200	\$135	\$205	\$185	\$110	\$185	\$215	\$170	\$130	\$110		
Monthly Project Team	20	2	20	20	10	10	4	8	10	2	6		2	20	5	10	10		
Subtotal			40.00	40.00	20.00	20.00	8.00	16.00	20.00	4.00	12.00	0.00	4.00	40.00	10.00	20.00	20.00	274.00	
Roundtable	4	3	4.00	4.00		4.00				1.00	4.00		1.00	4.00	4.00	4.00	4.00		
Subtotal			12.00	12.00	0.00	12.00	0.00	0.00	0.00	3.00	12.00	0.00	3.00	12.00	12.00	12.00	12.00	102.00	
Open House	2	3	3.00	3.00		3.00				2.00	2.00			2.00	2.00	2.00	2.00		
Subtotal			9.00	9.00	0.00	9.00	0.00	0.00	0.00	6.00	6.00	0.00	0.00	6.00	6.00	6.00	6.00	63.00	
EIR Scoping	1	3	1.00			1.00					1.00			1.00					
Subtotal			3.00	0.00	0.00	3.00	0.00	0.00	0.00	0.00	3.00	0.00	0.00	3.00	0.00	0.00	0.00	12.00	
City Council	1	8	1.00			1.00				1.00	1.00			1.00	1.00	1.00	1.00		
Subtotal			8.00	0.00	0.00	8.00	0.00	0.00	0.00	8.00	8.00	0.00	0.00	8.00	8.00	8.00	8.00	0.00	
Weekly PDC	90	1	90.00	75.00	75.00	75.00		5.00	5.00	5.00	10.00		5.00	45.00	10.00	20.00	20.00		
Subtotal			90.00	75.00	75.00	75.00	0.00	5.00	5.00	5.00	10.00	0.00	5.00	45.00	10.00	20.00	20.00	0.00	
UCPG	2	3	2.00					2.00		2.00	2.00			2.00		2.00	2.00		
Subtotal			6.00	0.00	0.00	0.00	0.00	6.00	0.00	6.00	6.00	0.00	0.00	6.00	0.00	6.00	6.00	0.00	
Meetings Total			168	136	95	127	8	27	25	32	57	0	12	120	46	72	72	451	

000141

**EXHIBIT B**  
**LIMITED ROADWAY CHANGES**  
**DESIGN COSTS**  
**Project Design Consultants**

<i>Task Description</i>	<i>Expenses (\$)</i>	<i>Cost Sum (\$)</i>
<b>1 PRELIMINARY DESIGN</b>		
1.1 Conduct Data Collection	\$1,500	\$21,177
Subtotal	\$1,500	\$21,177
1.3 Prepare Roadway/Approach Design	\$400	\$21,850
Subtotal	\$400	\$21,850
1.4 Prepare Preliminary Plans and Profiles	\$450	\$9,990
Subtotal	\$450	\$9,990
1.5 Preliminary Drainage/Water Quality Studies	\$1,200	\$34,824
Subtotal	\$1,200	\$34,824
1.8 Identify Bridge Design EIR Mitigation Commitments		\$3,800
Subtotal	\$0	\$3,800
3.4 Prepare Roadway and Approach Design		
Subtotal	\$14,600	\$490,955
3.4.6 Right-of-Way Engineering	\$1,400	\$21,644
Subtotal	\$1,400	\$21,644
<b>4. PROJECT MANAGEMENT</b>		\$0
Subtotal	\$0	\$102,530
5.1 Meetings and Hearings		\$5,780
Subtotal	\$0	\$5,780
6.1 Bid Support		\$11,880
Subtotal	\$0	\$11,880
<b>TOTAL PDC TASKS</b>	<b>\$19,550</b>	<b>\$724,430</b>

**EXHIBIT B  
LIMITED ROADWAY CHANGES  
DESIGN COSTS  
USA**

<b>Task Description</b>	<b>Expenses (\$)</b>	<b>Cost Sum (\$)</b>
<b>1.6 Prepare Preliminary Traffic Studies</b>	\$0	\$22,155
<b>Subtotal</b>	<b>\$0</b>	<b>\$22,155</b>
<b>3.2 Conduct Traffic Engineering Design</b>		\$134,000
<b>Subtotal</b>	<b>\$0</b>	<b>\$134,000</b>
<b>5.7 Meetings and Hearings</b>		\$2,400
<b>Subtotal</b>	<b>\$0</b>	<b>\$2,400</b>
<b>6.7 Bid Support</b>		\$3,120
<b>Subtotal</b>	<b>\$0</b>	<b>\$3,120</b>
<b>TOTAL USA TASKS</b>	<b>\$0</b>	<b>\$161,675</b>

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**EXHIBIT B  
LIMITED ROADWAY CHANGES  
DESIGN COSTS  
GEOCON**

<i>Task Description</i>	<i>Expenses (\$)</i>	<i>Cost Sum (\$)</i>
1.7 Preliminary Geotechnical Investigation		\$6,246
Subtotal	\$0	\$6,246
3.1 Conduct Final Geotechnical Investigations	\$22,860	\$47,166
Subtotal	\$22,860	\$47,166
5.2 Meetings and Hearings		\$1,400
Subtotal	\$0	\$1,400
6.2 Bid Support		\$3,360
Subtotal	\$0	\$3,360
<b>TOTAL GEOCON TASKS</b>	<b>\$22,860</b>	<b>\$58,172</b>

000146

**EXHIBIT B**  
**LIMITED ROADWAY CHANGES**  
**DESIGN COSTS**  
**T.Y. LIN**

<i>Task Description</i>	<i>Expenses (\$)</i>	<i>Cost Sum (\$)</i>
<b>1.10. Prepare Preliminary Bridge Design</b>		
Subtotal	\$0	\$8,270
<b>1.11 Prepare Preliminary Retaining Wall Design</b>		\$15,975
Subtotal	\$0	\$15,975
<b>3.6. Prepare Final Bridge Design</b>		
Subtotal	\$3,000	\$244,615
<b>Provide Support for Wetland Permit Process</b>		
Subtotal	\$0	\$22,390
<b>3.9 Caltrans Permit</b>		\$73,180
Subtotal	\$6,000	\$73,180
		\$0
<b>3.9.8 Process Caltrans Encroachment Permit</b>		\$0
Subtotal	\$0	\$0
		\$0
<b>5.8 Meetings and Hearings</b>		\$5,550
Subtotal	\$0	\$5,550
<b>6.6 Bid Support</b>		\$13,860
Subtotal	\$0	\$13,860
<b>TOTAL T.Y. LIN TASKS</b>	<b>\$9,000</b>	<b>\$383,840</b>



000147

**EXHIBIT B**  
**LIMITED ROADWAY CHANGES**  
**DESIGN COSTS**  
**Safdie Rabines**

<i>Task Description</i>	<i>Expenses (\$)</i>	<i>Cost Sum (\$)</i>
1.11 Prepare Preliminary Retaining Wall Design Renderings	\$4,175	\$41,000
Subtotal	\$4,175	\$41,000
5.8 Meetings and Hearings		\$1,850
Subtotal	\$0	\$1,850
6 Bid Support		\$0
Subtotal	\$0	\$0
<b>TOTAL SAFDIE RABINES TASKS</b>	<b>\$4,175</b>	<b>\$42,850</b>

000148

**EXHIBIT B**  
**LIMITED ROADWAY CHANGES**  
**DESIGN COSTS**  
**Parsons Brinckerhoff**

<i>Task Description</i>	<i>Expenses (\$)</i>	<i>Cost Sum (\$)</i>
3.10 Prepare Noise Attenuation Specifications.		\$0
Subtotal	\$1,250	\$72,476
5.6 Meetings and Hearings		\$2,050
Subtotal	\$0	\$2,050
6.4 Bid Support		\$3,280
Subtotal	\$0	\$3,280
<b>TOTAL PARSONS BRINCKERHOFF TASKS</b>	<b>\$1,250</b>	<b>\$77,806</b>

000149

**EXHIBIT B**  
**LIMITED ROADWAY CHANGES**  
**DESIGN COSTS**  
**Syska Hennessy**

<i>Task Description</i>	<i>Expenses (\$)</i>	<i>Cost Sum (\$)</i>
1.8 Identify EIR Mitigation Design Issues		\$1,590
Subtotal	\$0	\$1,590
3.3 Design Bridge Lighting		\$4,185
Subtotal	\$0	\$4,185
3.6. Prepare Final Bridge Design		
Subtotal	\$0	\$10,515
3.7 Determine Engineer Power Needs		\$3,810
Subtotal	\$0	\$3,810
5.7 Meetings and Hearings		\$1,850
Subtotal	\$0	\$1,850
6.5 Bid Support		\$830
Subtotal	\$0	\$830
<b>TOTAL SYSKA HENNESSY TASKS</b>	<b>\$0</b>	<b>\$22,780</b>

000150

**EXHIBIT B  
LIMITED ROADWAY CHANGES  
DESIGN COSTS  
GRAND TOTAL**

<b>Consultant</b>	<b>Cost</b>
Project Design Consultants	\$724,430.00
USA (includes 5% overhead)	\$169,758.75
GEOCON (includes 5% overhead)	\$61,080.60
TYLIN (includes 5% overhead)	\$403,032.00
SRA (includes 5% overhead)	\$44,992.50
Parsons Brinckerhoff (includes 5% overhead)	\$81,696.30
Syska Hennessy (includes 5% overhead)	\$23,919.00
<b>GRAND TOTAL</b>	<b>\$1,508,909.15</b>



## SAN DIEGO LABOR RATE SCHEDULE

Effective January 1, 2007

Principal/Senior VP	\$200
Senior Project Manager/VP	\$175
Project Manager	\$165
<b>Planning &amp; Landscape Architecture</b>	
Senior/Senior Planner	\$125
Senior Landscape Architect	\$115
GIS Specialist, CAD/GIS Coordinator, Associate Planner	\$110
Landscape Architect, Project Planner	\$105
Landscape Designer, Assistant Planner	\$100
Urban Designer, Electronics Visualization Specialist	\$100
Junior Planner	\$95
GIS Technician	\$90
Graphics Artist	\$85
Landscape Drafter, Asst. Landscape Designer	\$75
Planning Intern, Clerical	\$70
<b>Engineering</b>	
Senior Project Engineer, Design Manager	\$145
Project Engineer, Design Supervisor, Water Quality Engineer	\$125
Senior Civil Designer, Design Engineer	\$115
Civil Engineer, CADD Manager	\$105
QC Specialist	\$100
Civil Designer	\$90
Asst. Civil Engineer	\$85
Design Drafter	\$80
Drafter, Clerical	\$70
Permit Processor	\$65
Junior Technician, Intern	\$55
<b>Surveying, Photogrammetry</b>	
Site Manager, Crew Manager, Mapping Manager, Sr. Surveyor	\$135
Sr. Right-of-Way Agent	\$130
Surveyor	\$115
Survey Crew/Mapping Coordinator, Photogrammetric Mapping Mgr.	\$110
Survey/Map Tech II	\$95
Photogrammetrist/Photogrammetric Map Editor	\$95
Right-of-Way Agent	\$90
Survey/Map Tech I	\$85
Right-of-Way Special Projects Engineer	\$80
Clerical	\$70
1-Man Crew	\$140
2-Man Crew	\$195
3-Man Crew	\$240

Reimbursable charges for blueprinting, photographic mylar reproduction, photocopying, travel and mileage, delivery services, telephone charges, computerized plotting, special graphic supplies, facsimiles, and other direct project charges incurred on behalf of Client will be billed to Client at cost plus 10%.

*Rates subject to change without notice after June 30, 2007*

000152

000153

**URBAN SYSTEMS ASSOCIATES, INC.**PLANNING & TRAFFIC ENGINEERING, MARKETING & PROJECT SUPPORT  
CONSULTANTS TO INDUSTRY AND GOVERNMENT**HOURLY RATE SCHEDULE**

current through June, 2007

Staff Support Services/Production .....	60.00
CAD System Manager/Operator <sup>1</sup> .....	80.00
Project Manager .....	90.00
Senior Project Manager/ Designer .....	110.00
3D Modeling / Rendering / Animation .....	120.00
Senior Transportation Planner.....	120.00
Principal Planning Director.....	130.00
Principal Traffic Engineer.....	130.00

<sup>1</sup> includes high speed color work station cpu and plotter time.

Trial Preparation, Court Testimony, or Depositions will increase rates for all categories  
an additional 150%, with a minimum four (4) hour charge.

**Unless otherwise agreed:**

*Reimbursable expenses will be billed at cost and may include: authorized travel, reproduction, long distance telephone, fax or delivery charges, project specific supplies, forecast computer/plot charges, messengers, and other non-labor costs as are required. An administrative and coordination fee of (10) percent will be added to all services subcontracted.*

*Additional insurance requirements shall be reimbursed at cost.*

All invoices are due and payable within thirty days after invoice date. Any unpaid balances after thirty days shall be subject to a service charge of 1.5% per month (18% per annum). Payment to Urban Systems Associates, Inc., for services performed shall not be contingent upon payment from others. Unpaid accounts will receive notification that work may be stopped on the project until payment arrangements are made.

Payments to be made to: **URBAN SYSTEMS ASSOCIATES INC.**  
**4540 Kearny Villa Road, #106**  
**San Diego, CA 92123-1573**

Travel forecast work extending beyond project boundaries may be covered by copyright or work product protection statutes.

*Billing rates are subject to periodic review and adjustments by  
Urban Systems Associates Inc. Board of Directors.*

000155

**GEOCON**  
INCORPORATED

GEOTECHNICAL CONSULTANTS



## 2006 SCHEDULE OF FEES GEOTECHNICAL

### PROFESSIONAL SERVICES

Word Processor/Non-Technical Assistant/Draftsman.....	\$69/hr.
Engineering Assistant/Lab Technician.....	*79/hr.
Engineering Field Technician (Including Vehicle and Nuclear Gauge).....	*85/hr.
Senior Engineering Field Technician (Including Vehicle and Nuclear Gauge).....	*90/hr.
Staff Engineer/Geologist.....	95/hr.
Senior Staff Engineer/Geologist.....	105/hr.
Project Engineer/Geologist.....	115/hr.
Senior Project Engineer/Geologist.....	125/hr.
Senior Engineer/Geologist.....	140/hr.
Associate Engineer/Geologist.....	175/hr.
Principal Engineer/Geologist/Litigation Support.....	195/hr.
Deposition or Court Appearance.....	350/hr.
Overtime and Saturday Rate.....	1.5 X Regular Hourly Rate
Sunday and Holiday Rate.....	2 X Regular Hourly Rate
Minimum Professional Fee.....	\$500/Per Project
Minimum Field Services Fee (per day or call-out).....	2 Hours
*Prevailing Wage Hourly Surcharge for Technicians and Inspectors per California Labor Code §720, et. Seq. ....	\$25/hr.

### TRAVEL

Personnel.....	Regular Hourly Rate
Subsistence (Per Diem).....	\$125/day

### EQUIPMENT & MATERIALS

Nuclear Gauge.....	Included in Technician Rate
Coring Machine (concrete, asphalt, masonry).....	\$165/day
Generator.....	85/day
Asphalt Cold Patch, 60-lb. sack.....	17/bag
Concrete, 60-lb. sack.....	17/bag
GPS Unit.....	160/day
Outside Services/Equipment/Materials.....	Cost + 15%

### LABORATORY TESTS

#### COMPACTION CURVES

4-inch mold (D1557).....	\$170/ea.
6-inch mold (D1557).....	185/ea.
California Impact (CAL216).....	180/ea.
Check Point.....	85ea.

#### SOIL AND AGGREGATE STABILITY

Resistance Value, R-Value (D2844/CAL301).....	\$245/ea.
R-Value, Treated (CAL301).....	260/ea.
California Bearing Ratio (D1883).....	525/ea.
Stabilization Ability of Lime (C977).....	180/ea.

#### SOIL AND AGGREGATE PROPERTIES

#200 Wash (D1140/C117).....	\$53/ea.	Moisture Determination, tube sample (D2216).....	\$21/ea.
Wet Sieve Analysis to #200 (D422).....	80/ea.	Moisture Determination and Unit Weight (D2937).....	41/ea.
Hydrometer Analysis (D422).....	150/ea.	Atterberg Limits: Plasticity Index (D4318).....	126/ea.
Sieve Analysis with Hydrometer (D422).....	150/ea.	Sand Equivalent (D2419).....	75/ea.
Specific Gravity, Soil (D854).....	68/ea.	pH and Resistivity (CAL643).....	130/ea.
Specific Gravity Coarse Aggregate (C127).....	40/ea.	Sulfate Content (CAL417).....	90/ea.
Specific Gravity Fine Aggregate (C128).....	68/ea.	Chloride Content (CAL422).....	49/ea.



## LABORATORY TESTS

### SHEAR STRENGTH

Unconfined Compression (D2166) .....	\$95/ea.
Direct Shear, Quick, per point (D3080) .....	63/pt.
Unconsolidated-Undrained Triaxial Shear (D2850) .....	110/pt.
Unconsolidated-Undrained Triaxial Staged (D2850) .....	158/ea.
Consolidated-Undrained Triaxial Shear (D4767) .....	263/pt.
Consolidated-Undrained Triaxial Staged (D4767) .....	335/ea.
Consolidated-Drained Triaxial Shear (EM1110) .....	370/pt.
Consolidated-Drained Triaxial Staged (EM1110) .....	475/ea.

### CONCRETE

Compressive Strength, Cast Cylinders (C39) .....	\$30/ea.
Compressive Strength, Cores (C42) .....	43/ea.
Flexural Strength Beam (C78/C293) .....	79/ea.
Splitting Tensile Test (C496) .....	69/ea.
Mix Design Review .....	185/ea.
Trial Batch .....	475/ea.

### PERMEABILITY, CONSOLIDATION AND EXPANSION

Permeability, Flexible Wall (D5084) .....	\$265/ea.
Permeability, Rigid Wall (D5856) .....	255/ea.
Consolidation, per point (D2435) .....	42/pt.
Expansion Index (D4829/UBC 29-2) .....	135/ea.

### MASONRY

CMU Compressive Strength (C140) .....	\$58/ea.
Compressive Strength, Grout (C1019/UBC 21-19) .....	30/ea.
Compressive Strength, Mortar (C109/UBC 21-15,16) .....	30/ea.
CMU Unit Wt., Dimen., Absorption (C140) .....	58/ea.
Compressive Strength, Masonry Prism (C1314) .....	105/ea.

### AGGREGATE QUALITY

Dry Sieve Analysis to #200 (C13) .....	\$79/ea.
L.A. Rattler Test (500 rev.) (C131) .....	185/ea.
Sulfate Soundness (per sieve size) (C88) .....	99/ea.
Durability Index (D3744) .....	135/ea.
Unit Weight (C142) .....	69/ea.
Organic Impurities - Sand (C40) .....	53/ea.
Friable Particles (C142) .....	80/ea.

### ASPHALT CONCRETE

Density, Hveem (D2726/CAL308) .....	\$85/ea.
Stabilometer (D1560/CAL304) .....	99/ea.
Theoretical Max. Specific Gravity (D2041) .....	69/ea.
Sieve Analysis Extracted Aggregate (C136) .....	80/ea.
% Asphalt, Ignition Method (CAL382) .....	90/ea.
% Asphalt, Nuclear Gauge (CAL379) .....	105/ea.
Unit Weight, Core (D 1188) .....	48/ea.

## TERMS AND CONDITIONS

1. Listed are typical charges for the services most frequently performed by Geocon. Prices for unlisted services as well as special quotations for programs involving volume work will be provided upon request. Laboratory test prices shown are for laboratory work only, and include reporting of routine results not calling for comments, recommendations or conclusions.
2. All sampling and testing is conducted in substantial conformance with the latest applicable or designated specifications of the American Society for Testing and Materials, Caltrans, American Association of State Highway Officials, or other pertinent agencies.
3. Saturday and overtime hours are charged at time and one-half; Sundays and holidays at double time. Per diem is \$125.00 per day when location of work dictates.
4. Field tests and instrumentation installation such as plate bearing, pile load, vane shear, piezometer, slope inclinometer, and other special tests will be charged at applicable hourly rates. Equipment and materials will be billed at cost plus 15%. Outside services including subcontractors and rental of special equipment are billed at cost plus 15 percent. Hourly services are billed portal to portal from closest office in accordance with the stated hourly rates herein, with a minimum two-hour charge.
5. A surcharge of \$25.00 per hour will be added to the Professional Services classifications indicated with an asterisk (\*) on the Schedule of Fees in order to comply with the prevailing wage requirements of California Labor Code §720, et. seq.
6. Invoices will be submitted at four-week intervals. Terms of payment are net upon presentation of invoice. Invoices become delinquent thirty (30) days from invoice date and subject to one and one-half percent (1-1/2%) service charge per month, or the maximum rate allowed by law, whichever is lower. If Client objects to all or any portion of any invoice, Client will so notify Geocon in writing within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay that portion of the invoice not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. Payment on delinquent invoices will first be applied to accrued interest and then to the principal amount. All time spent and expenses incurred (including any attorney's fees and costs) in connection with collection of any delinquent amount will be paid by Client to Geocon per Geocon's current fee schedule.
7. Many risks potentially affect Geocon by virtue of entering into this agreement to perform professional engineering services on behalf of Client. The principal risk is the potential for human error by Geocon. For Client to obtain the benefit of a fee which includes a nominal allowance for dealing with our liability, Client agrees to limit our liability to Client and to all other parties for claims arising out of our performance of the services described in the agreement. The aggregate liability of Geocon will not exceed \$50,000 for negligent professional acts, errors, or omissions, including attorney's fees and costs which may be awarded to the prevailing party, and Client agrees to indemnify and hold harmless Geocon from and against all liabilities in excess of the monetary limit established above.

000157

**KATZ & ASSOCIATES, INC.**  
**2007 HOURLY RATES**

<u>Labor Classification</u>	<u>Hourly Rate</u>
President/Principal in Charge	\$210
Senior Vice President	\$200
Vice President/Facilitator	\$195
Senior Director	\$185
Director	\$175
Senior Account Supervisor	\$165
Account Supervisor	\$150
Senior Account Executive	\$140
Account Executive II	\$125
Account Executive I	\$115
Assistant Account Executive	\$85
Account Coordinator	\$65
Project Support	\$50

####

**2007  
SCHEDULE OF FEES*****Hourly Charges***

Principal Bridge Engineer .....	\$210.00
Supervising Bridge Engineer .....	\$175.00
Senior Bridge Engineer II .....	\$150.00
Senior Bridge Engineer I.....	\$135.00
Bridge Engineer II .....	\$120.00
Bridge Engineer I .....	\$110.00
Assistant Bridge Engineer .....	\$100.00
Civil Engineer.....	\$90.00
Structural Design Technician III .....	\$105.00
Structural Design Technician II.....	\$90.00
Structural Design Technician I.....	\$65.00
Vehicle Mileage .....	\$0.55/Mile

Hourly charges include provision for normal office overhead costs, such as office rental, utilities, insurance, clerical services, equipment, normal supplies and materials, and in-house reproduction services. Other expenses such as special consultants or purchased outside services will be billed at cost plus 10 percent

000161

SAFDIE RABINES ARCHITECTS

1101 Washington Place, San Diego, California 92103-1726  
p. 619.297.6153 f. 619.299.6072 [www.safdie rabines.com](http://www.safdie rabines.com)

Safdie Rabines Architects  
2007 Fee Schedule

Principal	\$195 /hr
Project Manager	\$120 /hr
Architect 3	\$85 /hr
Architect 2	\$70 /hr
Architect 1	\$60 /hr
Draftsman	\$55 /hr
Quality Assurance	\$120 /hr
Administrative	\$70 /hr

**PB Americas**  
**Hourly Rate Schedule - 2007**

	<b>Hourly Rate</b>
Principal Noise & Vibration Professional	\$220
Noise & Vibration Professional	\$120
Planner	\$ 85
Administrative Staff	\$ 90

Rates are reviewed in November of each year and adjustments made to reflect cost of living and salary increases

**ATTACHMENT A**  
**REGENTS ROAD BRIDGE**  
**BILLING RATE SCHEDULE\***  
**2007**

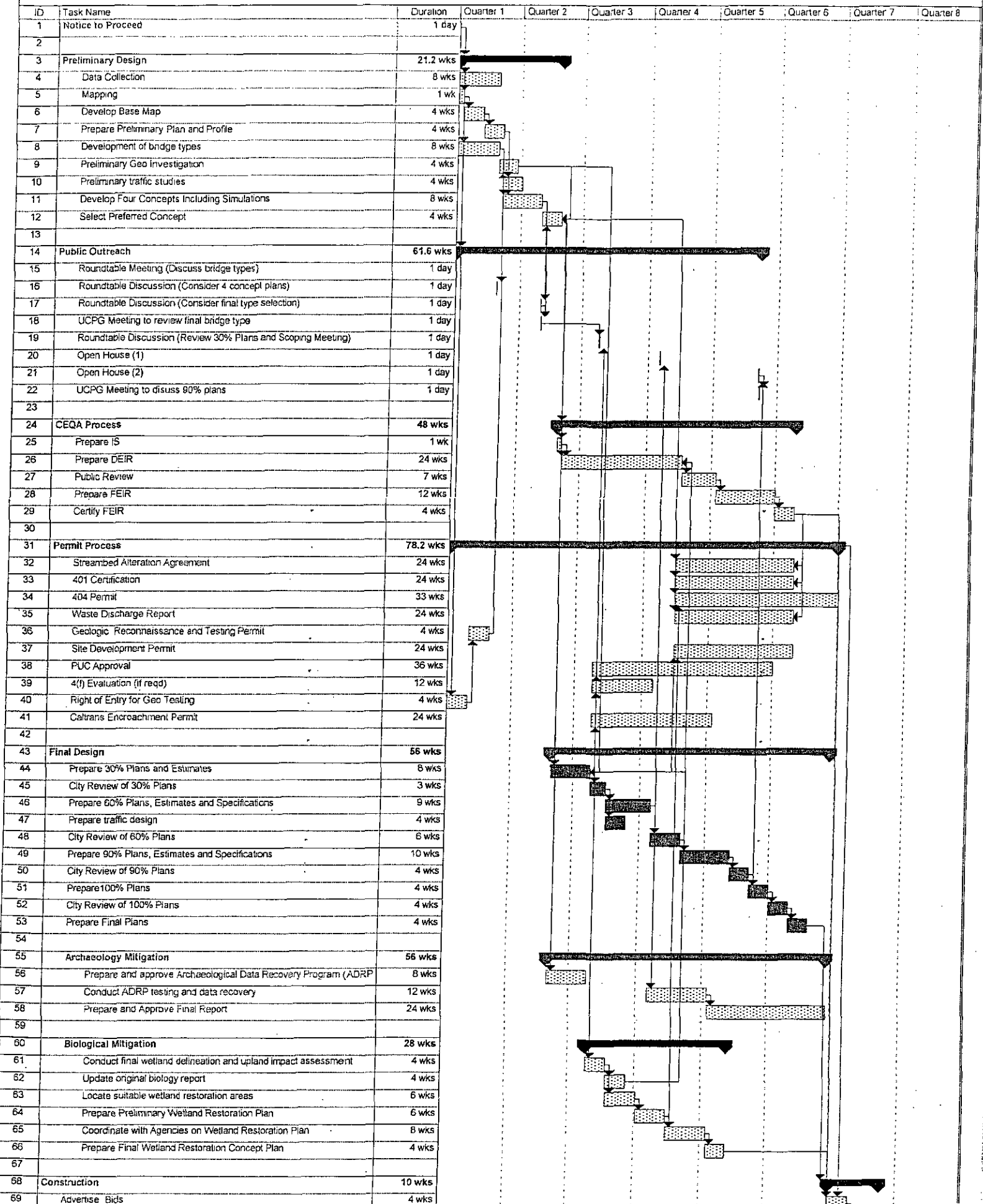
<u><b>TITLE CATEGORY</b></u>	<u><b>RATE PER HOUR (\$)</b></u>
Principal	200.00
Project Manager/Supervising Engineer	165.00
Supervising Designer	150.00
Senior Engineer	140.00
Senior Designer	130.00
Engineer	110.00
Sustainability Specialist	110.00
Designer	90.00
CADD Specialist	80.00
Engineering Aide	60.00

The reimbursable expense mark-up billing rate for Syska Hennessy Group is 10% unless negotiated into a lump sum fee. In that case, the 10% rate will be waived.

\* Subject to review annually.

000165

# EXHIBIT C- TIME SCHEDULE



**EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)  
CONTRACTOR REQUIREMENTS**

**TABLE OF CONTENTS**

<b>I.</b>	<b>City's Equal Opportunity Commitment.....</b>	<b>1</b>
<b>II.</b>	<b>Nondiscrimination in Contracting Ordinance.....</b>	<b>1</b>
<b>III.</b>	<b>Equal Employment Opportunity.....</b>	<b>2</b>
<b>IV.</b>	<b>Equal Opportunity Contracting.....</b>	<b>4</b>
<b>V.</b>	<b>Demonstrated Commitment to Equal Opportunity.....</b>	<b>5</b>
<b>VI.</b>	<b>List of Subcontractors.....</b>	<b>6</b>
<b>VII.</b>	<b>Definitions.....</b>	<b>6</b>
<b>VIII.</b>	<b>Certification.....</b>	<b>7</b>
<b>IX.</b>	<b>List of Attachments.....</b>	<b>7</b>

**I. City's Equal Opportunity Commitment.** The City of San Diego (City) is strongly committed to equal opportunity for employees and Subcontractors of professional service consultants doing business with the City. The City encourages its consultants to share this commitment. Prime consultants are encouraged to take positive steps to diversify and expand their Subcontractor solicitation base and to offer consulting opportunities to all eligible Subcontractors.

**II. Nondiscrimination in Contracting Ordinance.** All consultants and professional service providers doing business with the City, and their Subcontractors, must comply with requirements of the City's *Nondiscrimination in Contracting Ordinance*, San Diego Municipal Code Sections 22.3501 through 22.3517.

A. Proposal Documents to include Disclosure of Discrimination Complaints. As part of its bid or proposal, Proposer shall provide to the City a list of all instances within the past ten (10) years where a complaint was filed or pending against Proposer in a legal or administrative proceeding alleging that Proposer discriminated against its employees, Subcontractors, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

B. Contract Language. The following language shall be included in contracts for City projects between the consultant and any Subcontractors, vendors, and suppliers:

Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors,



vendors, or suppliers. Consultant shall provide equal opportunity for Subcontractors to participate in subconsulting opportunities. Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

- C. Compliance Investigations. Upon the City's request, Consultant agrees to provide to the City, within sixty (60) calendar days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that Consultant has used in the past five (5) years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Consultant for each subcontract or supply contract. Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's *Nondiscrimination in Contracting Ordinance*, Municipal Code Sections 22.3501 through 22.3517. Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Consultant up to and including contract termination, debarment and other sanctions for violation of the provisions of the *Nondiscrimination in Contracting Ordinance*. Consultant further understands and agrees that the procedures, remedies and sanctions provided for in the *Nondiscrimination in Contracting Ordinance* apply only to violations of the *Ordinance*.

**III. Equal Employment Opportunity.** Consultants shall comply with requirements of San Diego Ordinance No. 18173, Section 22.2701 through 22.2707, Equal Employment Opportunity Outreach Program. Consultants shall submit a *Work Force Report* or an *Equal Employment Opportunity (EEO) Plan* to the Program Manager of the City of San Diego Equal Opportunity Contracting Program (EOCP) for approval.

- A. Work Force Report. If a *Work Force Report* (Attachment AA) is submitted, and an EOCP staff Work Force Analysis determines there are under representation when compared to County Labor Force Availability data, Consultant will be required to submit an *Equal Employment Opportunity Plan*.
- B. Equal Employment Opportunity Plan. If an *Equal Employment Opportunity Plan* is submitted, it must include at least the following assurances that:
1. The Consultant will maintain a working environment free of discrimination, harassment, intimidation and coercion at all sites and in all facilities at which the Consultant's employees are assigned to work;
  2. A responsible official is designated to monitor all employment related activity to ensure the Consultant's EEO Policy is being carried out and to submit reports relating to EEO provisions;

3. Consultant disseminates and reviews its EEO Policy with all employees at least once a year, posts the policy statement and EEO posters on all company bulletin boards and job sites, and documents every dissemination review and posting with a written record to identify the time, place, employees present, subject matter, and disposition of meetings;
4. The Consultant reviews, at least annually, all supervisor's adherence to and performance under the EEO Policy and maintains written documentation of these reviews;
5. The Consultant discusses its EEO Policy Statement with Subcontractors with whom it anticipates doing business, includes the EEO Policy Statement in its subcontracts, and provides such documentation to the City upon request;
6. The Consultant documents and maintains a record of all bid solicitations and outreach efforts to and from Subcontractors, consultant associations and other business associations;
7. The Consultant disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements to the City upon request;
8. The Consultant disseminates its EEO Policy to union and community organizations;
9. The Consultant provides immediate written notification to the City when any union referral process has impeded the Consultant's efforts to maintain its EEO Policy;
10. The Consultant maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources with a record of the organizations' responses;
11. The Consultant maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources, or community organizations with a description of the employment action taken;
12. The Consultant encourages all present employees, including people of color and women employees, to recruit others;

13. The Consultant maintains all employment selection process information with records of all tests and other selection criteria;
14. The Consultant develops and maintains documentation for on-the-job training opportunities and/or participates in training programs for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the Consultant's employment needs;
15. The Consultant conducts, at least annually, an inventory and evaluation of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities;
16. The Consultant ensures the company's working environment and activities are non-segregated except for providing separate or single-user toilets and necessary changing facilities to assure privacy between the sexes;
17. The Consultant establishes and documents policies and procedures to ensure job classifications, work assignments, promotional tests, recruitment and other personnel practices do not have a discriminatory effect; and
18. The Consultant is encouraged to participate in voluntary associations, which assist in fulfilling one or more of its non-discrimination obligations. The efforts of a consultant association, consultant/community professional association, foundation or other similar group of which the Consultant is a member will be considered as being part of fulfilling these obligations, provided the Consultant actively participates.

**IV. Equal Opportunity Contracting.** Prime consultants are encouraged to take positive steps to diversify and expand their Subcontractor solicitation base and to offer contracting opportunities to all eligible Subcontractor. To support its Equal Opportunity Contracting commitment, the City has established a voluntary *Subcontractor participation level*:

**A. Subcontractor Participation Level**

1. Projects valued at \$25,000 or more have a voluntary Subcontractor Participation Level goal of 15%. Goals are achieved by contracting with any combination of Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE), Disabled Veteran Business Enterprise (DVBE) or Other Business Enterprise (OBE) level.

2. While attainment of the 15% Subcontractor Participation Level goal is strictly voluntary, the City encourages diversity in your outreach and selection efforts. Historical data indicates that of the overall 15% goal, 25% to 30% Disadvantaged Business Enterprise (DBE) and 1% to 3% Disabled Veteran Business Enterprise (DVBE) participation is attainable. The remaining percentages may be allocated to Other Business Enterprises (OBE). Participation levels may be used as a tiebreaker in cases of an overall tie between two or more firms.
- B. Contract Activity Reports. To permit monitoring of the successful Consultant's commitment to achieving compliance, *Contract Activity Reports* (Attachment BB) reflecting work performed by Subcontractors shall be submitted quarterly for any work covered under an executed contract.
- V. **Demonstrated Commitment to Equal Opportunity.** The City seeks to foster a business climate of inclusion and to eliminate barriers to inclusion.
- A. Proposers are required to submit the following information with their proposals:
1. Outreach Efforts. Description of Proposer's outreach efforts undertaken on this project to make subconsulting opportunities available to all interested and qualified firms.
  2. Past Participation Levels. Listing of Proposer's Subcontractor participation levels achieved on all private and public projects within the past three (3) years. Include name of project, type of project, value of project, Subcontractor firm's name, percentage of Subcontractor firm's participation, and identification of Subcontractor firm's ownership as a certified Small Business, Disadvantaged Business Enterprise, Disabled Veteran Business Enterprise, or Other Business Enterprise.
  3. Equal Opportunity Employment. Listing of Proposer's strategies to recruit, hire, train and promote a diverse workforce. These efforts will be considered in conjunction with Proposer's *Workforce Report* as compared to the County's Labor Force Availability.
  4. Community Activities. Listing of Proposer's current community activities such as membership and participation in local organizations, associations, scholarship programs, mentoring, apprenticeships, internships, community projects, charitable contributions and similar endeavors.
- B. Consultant selection panels will consider and evaluate the Proposer's demonstrated commitment to equal opportunity including the following factors:
1. Outreach Efforts. Proposer's outreach efforts undertaken and willingness to make meaningful subconsulting opportunities available to all interested and qualified firms on this project.

2. Past Participation Levels. Proposer's Subcontractor participation levels achieved on all private and public projects within the past three (3) years.
3. Equal Opportunity Employment. Proposer's use of productive strategies to successfully attain a diverse workforce as compared to the County's Labor Force Availability.
4. Community Activities. Proposer's current community activities.

**VI. List of Subcontractors.** Consultants are required to submit a *Subcontractor List* with their proposal.

A. Subcontractors List. The *Subcontractor List* (Attachment BB) shall indicate the Name and Address, Scope of Work, Percent of Total Proposed Contract Amount, Dollar Amount of Proposed Subcontract, Certification Status and Where Certified for each proposed Subcontractor.

1. Subcontractors must be named on the *Subcontractors List* if they receive more than one-half of one percent (0.5%) of the Prime Consultant's fee.

B. Commitment Letters. Proposer shall also submit Subcontractor *Commitment Letters* on Subcontractor's letterhead, no more than one page each, from all proposed Subcontractors to acknowledge their commitment to the team, scope of work, and percent of participation in the project.

**VII. Definitions.** Certified "**Minority Business Enterprise**" (MBE) means a business which is at least fifty-one percent (51%) owned by African Americans, American Indians, Asians, Filipinos, and/or Latinos and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more members of the identified ethnic groups.

Certified "**Women Business Enterprise**" (WBE) means a business which is at least fifty-one percent (51%) owned by one or more women and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more women.

Certified "**Disadvantaged Business Enterprise**" (DBE) means a business which is at least fifty-one percent (51%) owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.

Certified “**Disabled Veteran Business Enterprise**” (DVBE) means a business which is at least fifty-one percent (51%) owned by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party(ies).

“**Other Business Enterprise**” (OBE) means any business which does not otherwise qualify as Minority, Woman, Disadvantaged or Disabled Veteran Business Enterprise.

#### **VIII. Certification.**

A. The City of San Diego is a signatory to a Memorandum of Understanding (MOU) with the California Department of Transportation (CALTRANS), and therefore has adopted a policy regarding certification of MBE/WBE/DBE/DVBE firms. As a result of the MOU, an MBE, WBE or DBE is certified as such by any of the following methods:

1. Current certification by the City of San Diego as MBE, WBE, or DBE;
2. Current certification by the State of California Department of Transportation (CALTRANS) as MBE, WBE or DBE;
3. Current MBE, WBE or DBE certification from any participating agency in the statewide certified pool of firms known as CALCERT.

B. DVBE certification is received from the State of California’s Department of General Services, Office of Small and Minority Business (916) 322-5060.

#### **IX. List of Attachments.**

- AA - *Work Force Report*
- BB - *Subcontractors List*
- CC - *Contract Activity Report*

000173



City of San Diego

**EQUAL OPPORTUNITY CONTRACTING (EOC)**

1010 Second Avenue • Suite 500 • San Diego, CA 92101

Phone: (619) 533-4464 • Fax: (619) 533-4474

**WORK FORCE REPORT****LOCAL WORK FORCE**

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report*.

**CONTRACTOR IDENTIFICATION**

Type of Contractor: ☐ Construction ☐ Vendor/Supplier ☐ Financial Institution ☐ Lessee/Lessor  
☒ **Consultant** ☐ Grant Recipient ☐ Insurance Company ☐ Other

Name of Company: Project Design ConsultantsAKA/DBA: PDCAddress (Corporate Headquarters, where applicable): 701 B Street, Suite 800City San Diego County San Diego State CA Zip 92101Telephone Number: (619) 235-6471 FAX Number: (619) 234-0349Name of Company CEO: Gregory M. Shields, PE

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ FAX Number: ( ) \_\_\_\_\_

Type of Business: Professional Design Services Type of License: \_\_\_\_\_The Company has appointed: Peg Reiter, PHR

as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 701 B Street, Suite 800, San Diego, CA 92101Telephone Number: (619) 881-2505 FAX Number: (619) 819-4109For Firm's: ☒ **San Diego Work Force** and/or ☐ **Managing Office Work Force**

I, the undersigned representative of Project Design Consultants  
 (Firm Name)

San Diego County, California hereby certify that information provided  
 (County) (State)

herein is true and correct. This document was executed on this 6th day of July 2007.

[Signature]  
 (Authorized Signature)

Gregory M. Shields, PE  
 (Print Authorized Signature Name)

## WORK FORCE REPORT - Page 2

NAME OF FIRM: Project Design Consultants (San Diego Employees Only)DATE: July 6, 2007

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- |  |  |
|--|--|
| (1) African-American, Black                          | (5) Filipino                                       |
| (2) Latino, Hispanic, Mexican-American, Puerto Rican | (6) Caucasian                                      |
| (3) Asian, Pacific Islander                          | (7) Other ethnicity; not falling into other groups |
| (4) American Indian, Eskimo                          |  |

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive, Administrative, Managerial			1			1					4	2		
Professional Specialty											2	2		
Engineers/Architects			1	1	1						23	7		
Technicians and Related Support			10	1	2	1			6	2	36	8		
Sales														
Administrative Support/Clerical		2	2	3					1	1	4	9		
Services														
Precision Production, Craft and Repair														
Machine Operators, Assemblers, Inspectors														
Transportation and Material Moving														
Handlers, Equipment Cleaners, Helpers and Non-construction Laborers*														

\*Construction laborers and other field employees are not to be included on this page

TOTALS EACH COLUMN		2	14	5	4	2			7	3	69	28		
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GRAND TOTAL ALL EMPLOYEES

134

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

NON-PROFIT ORGANIZATIONS ONLY:

BOARD OF DIRECTORS														
VOLUNTEERS														
ARTISTS														



## SUBCONTRACTORS LIST

## INFORMATION REGARDING SUBCONTRACTORS PARTICIPATION:

1. Subcontractor's List shall include name and complete address of all Subcontractors who will receive more than one half of one percent (0.5%) of the Prime Consultant's fee.
2. Proposer shall also submit Subcontractor commitment letters on Subcontractor's letterhead, no more than one page each, from Subcontractors listed below to acknowledge their commitment to the team, scope of work, and percent of participation in the project.
3. Subcontractors shall be used for scope of work listed. No changes to this Subcontractors List will be allowed without prior written City approval.

NAME AND ADDRESS SUBCONTRACTORS	SCOPE OF WORK	PERCENT OF CONTRACT	DOLLAR AMOUNT OF CONTRACT	*MBE/WBE/ DBE/DVBE/ OBE	**WHERE CERTIFIED

*\*For information only.* As appropriate, Proposer shall identify Subcontractors as:

Certified Minority Business Enterprise	MBE
Certified Woman Business Enterprise	WBE
Certified Disadvantaged Business Enterprise	DBE
Certified Disabled Veteran Business Enterprise	DVBE
Other Business Enterprise	OBE

*\*\*For information only.* As appropriate, Proposer shall indicate if Subcontractor is certified by:

City of San Diego	CITY
State of California Department of Transportation	CALTRANS

**DETERMINATION FORM****ATTACHMENT TO DETERMINATION FORM - DEFINITION OF "CONSULTANT"**

A "consultant" is an individual who, pursuant to a contract with a state or local government agency:

(A) Makes a governmental decision whether to:

1. Approve a rate, rule or regulation;
2. Adopt or enforce a law;
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
4. Authorize the City to enter into, modify, or renew a contract provided it is the type of contract that requires City approval;
5. Grant City approval to a contract that requires City approval and to which the City is a party, or to the specifications for such a contract;
6. Grant City approval to a plan, design, report, study, or similar item;
7. Adopt, or grant City approval of, policies, standards, or guidelines for the City, or for any subdivision thereof; or

(B) Serves in a staff capacity with the City and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code.

An individual "serves in a staff capacity" if he or she performs substantially all the same tasks that normally would be performed by staff member of a governmental entity. In most cases, individuals who work on only one project or a limited range of projects for an agency are not considered to be working in a "staff capacity." The length of the individual's service to the agency is relevant. Also, the tasks over the relevant period of time must be substantially the same as a position that is or should be specified in the City's conflict of interest code.

An individual "participates in making a governmental decision" if he or she: (1) negotiates, without substantive review, with a governmental entity or private person regarding the decision; or (2) advises or makes recommendations to the decision-maker, by conducting research or an investigation, preparing or presenting a report, analysis or opinion which requires the exercise of judgment on the part of the individual and the individual is attempting to influence the decision.

CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

SUBJECT: SUSTAINABLE BUILDING POLICY  
POLICY NO.: 900-14  
EFFECTIVE DATE: May 20, 2003

BACKGROUND:

Existing buildings and the building development industry consume nearly half of the total energy used in the United States. The City of San Diego's commitment to become increasingly efficient with resources, including energy, water, and materials associated with construction projects, is demonstrated in Council Policy 900-14 "Green Building Policy" adopted in 1997, Council Policy 900-16 "Community Energy Partnership," adopted in 2000, and the updated Council Policy 900-14 "Sustainable Buildings Expedite Program" adopted in 2001.

On April 16, 2002, the Mayor and City Council adopted CMR 02-060 which requires City projects to achieve the U.S. Green Building Council's LEED silver standard for all new buildings and major renovations over 5,000 square feet. This places San Diego among the most progressive cities in the nation in terms of sustainable building policies.

As a participant in the International Council for Local Environmental Initiatives (ICLEI) Cities for Climate Protection Program, as a Charter member in the California Climate Action Registry and as an active member of the U.S. Green Building Council, the City of San Diego is committed to reducing greenhouse gas emissions by implementing more sustainable practices, including green building technologies.

PURPOSE:

The purpose of this policy is to reassert the City's commitment to green building practices in City facilities, and to provide leadership and guidance in promoting, facilitating, and instituting such practices in the community.

POLICY:

The following principles will be required for all newly constructed facilities and major building renovation projects for City facilities:

LEED (Leadership in Energy and Environmental Design):

The LEED (Leadership in Energy and Environmental Design) Green Building Rating System is a voluntary, consensus-based national standard for developing high-performance, sustainable buildings. Members of the U.S. Green Building Council representing all segments of the building industry developed LEED and continue to contribute to its evolution.

The City of San Diego is committed to achieving LEED "Silver" Level Certification for all new City facilities and major building renovation projects over 5,000 square feet.

CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

The Environmental Services Department, Energy Conservation and Management Division has been designated by this Council Policy as the clearing authority for issues relating to energy for the City of San Diego. The Energy Conservation and Management Division will enter into a Memorandum of Understanding with those City Departments who design, renovate and build new city owned facilities to insure all new City facilities reflect the intent of Council Policy 900-14.

PRIVATE-SECTOR/INCENTIVES:

It shall be the policy of the City Council to expedite the ministerial process for projects which meet the following criteria:

1. Residential projects that provide 50% of their projected total energy use utilizing renewable energy resources, (e.g., photovoltaic, wind and fuel cells).
2. Commercial and industrial projects that provide 30% of their projected total energy use utilizing renewable energy resources, (e.g., photovoltaic, wind and fuel cells).
3. Residential and commercial and industrial projects that exceed the State of California Title 24 energy requirements by:
  - a. 15% better than California's Title 24.2001 for Residential Buildings.
  - b. 10% better than California's Title 24.2001 for Commercial and Industrial Buildings.

It shall be the policy of the City Council to expedite the discretionary process for projects which meet the following criteria:

1. Incorporate the U.S. Green Building Council, Leadership in Energy and Environmental Design (LEED) 2.0 Rating System "Silver" Level Certification for commercial development projects.
2. Incorporate self-generation through renewable technologies (e.g., photovoltaic, wind and fuel cells) to reduce environmental impacts associated with fossil fuel energy use for commercial and industrial projects generating a minimum of 30% or more of the designed energy consumption from renewable technologies such as photovoltaic, wind and fuel cells.
3. Residential discretionary projects of 4 units or more within urbanized communities as defined in the Progress Guide and General Plan that provide 50% of their projected total energy use utilizing renewable energy resources.

CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

HEALTH AND RESOURCE CONSERVATION:

1. Projects will be designed to avoid inflicting permanent adverse impact on the natural state of the air, land and water, by using resources and methods that minimize pollution and waste, and do not cause permanent damage to the earth, including erosion.
2. Projects will include innovative strategies and technologies such as porous paving to conserve water, reduce effluent and run-off, thus recharging the water table.
3. When feasible, native plants will be used in landscaping to reduce pesticide, fertilizer, and water usage.
4. Buildings will be constructed and operated using materials, methods, mechanical and electrical systems that ensure a healthful indoor air quality, while avoiding contamination by carcinogens, volatile organic compounds, fungi, molds, bacteria, and other known toxins.
5. Projects will be planned to minimize waste through the use of a variety of strategies such as: a) reuse of materials or the highest practical recycled content; b) raw materials derived from sustainable or renewable sources; c) materials and products ensuring long life/durability and recyclability; d) materials requiring the minimum of energy and rare resources to produce and use; and e) materials requiring the least amount of energy to transport to the job site.

OUTREACH / EDUCATION:

1. An education and outreach effort will be implemented to make the community aware of the benefits of "Green Building" practices.
2. The City will sponsor a recognition program for innovative Green Building projects implemented in the public as well as private sector in an effort to encourage and recognize outstanding environmental protection and energy conservation projects.

IMPLEMENTATION:

The City will seek cooperation with other governmental agencies, public interest organizations, and the private sector to promote, facilitate, and implement Green Building and energy efficiency in the community.

000188

CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

LEGISLATION:

The City will support State and Federal legislation that promotes or allows sustainable development, conservation of natural resources, and energy efficiency technology.

REFERENCES:

Related existing Council Policies:

400-11, Water Conservation Techniques

400-12, Water Reclamation/Reuse

900-02, Energy Conservation and Management

900-06, Solid Waste Recycling

HISTORY:

Adopted by Resolution R-289457 11/18/1997

Amended by Resolution R-295074 06/19/2001

Amended by Resolution R-298000 05/20/2003

000189

**City of San Diego**  
**Consultant Performance Evaluation**

EXHIBIT H

The purpose of this form is to provide historical data to City staff when selecting consultants.

**Section I**

1. PROJECT DATA		2. CONSULTANT DATA	
1a. Project (title, location and CIP No.):		2a. Name and address of Consultant:	
1b. Brief Description:		2b. Consultant's Project Manager:	
1c. Budgeted Cost:		Phone (    ) _____	
3. CITY DEPARTMENT RESPONSIBLE			
3a. Department (include division):		3b. Project Manager (address & phone):	
4. CONTRACT DATA (DESIGN AND CONSTRUCTION)			
<b>4. Design</b>			
4a. Agreement Date: _____ Resolution #: _____ \$ _____			
4b. Amendments: \$ _____ / # _____ (City) \$ _____ / # _____ (Consultant)			
4c. Total Agreement (4a. & 4b.): \$ _____			
4d. Type of Work (design, study, etc.):		4e. Key Contract Completion Dates:	
		_____ %    _____ %    _____ %    _____ %    _____ %    100 %	
		Agreement    _____ Delivery    _____ Acceptance    _____	
<b>5. Construction</b>			
5a. Contractor _____ (name and address)		Phone (    ) _____	
5b. Superintendent _____			
5c. Notice to Proceed _____ (date)		5f. Change Orders:	
5d. Working days _____ (number)		Errors/Omissions _____ % of const. cost \$ _____	
5e. Actual Working days _____ (number)		Unforeseen Conditions _____ % of const. cost \$ _____	
		Changed Scope _____ % of const. cost \$ _____	
		Changes Quantities _____ % of const. cost \$ _____	
		Total Construction Cost \$ _____	
6. OVERALL RATING (Please ensure Section II is completed)			
		Excellent	Satisfactory
6a. Plans/specification accuracy.....		_____	_____
Consistency with budget.....		_____	_____
Responsiveness to City Staff.....		_____	_____
6b. Overall Rating _____			
7. AUTHORIZING SIGNATURES			
7a. Project Manager _____		Date _____	
7b. Deputy Director _____		Date _____	

000190

## Section II

## SPECIFIC RATINGS

PLANS / SPECIFICATION ACCURACY	EXCELLENT	SATISFACTORY	POOR	N/A	RESPONSIVENESS TO STAFF	EXCELLENT	SATISFACTORY	POOR	N/A
Plan/Specification clear and precise					Timely Responses				
Plans/Specs Coordination					Attitude toward Client and review bodies				
Plans/Specs properly formatted					Follows direction and chain of responsibility				
Code Requirements covered					Work product delivered on time				
Adhered to City Standard Drawings/Specs					Timeliness in notifying City of major problems				
Drawings reflect existing conditions					Resolution of Field problems				
As-Built Drawings					CONSISTENCY WITH BUDGET	EXCELLENT	SATISFACTORY	POOR	N/A
Quality Design					Reasonable Agreement negotiation				
Change Orders due to design deficiencies are minimized					Adherence to fee schedule				
					Adherence to project budget				
					Value Engineering Analysis				

## Section III

## SUPPLEMENTAL INFORMATION

Please ensure to attach additional documentation as needed.

Item \_\_\_\_\_ : \_\_\_\_\_

Item \_\_\_\_\_ : \_\_\_\_\_

Item \_\_\_\_\_ : \_\_\_\_\_

Item \_\_\_\_\_ : \_\_\_\_\_

Item \_\_\_\_\_ : \_\_\_\_\_

Item \_\_\_\_\_ : \_\_\_\_\_

(\*Supporting documentation attached yes \_\_\_\_\_ no \_\_\_\_\_)



#53  
10-09-07

SHUTE, MIHALY & WEINBERGER LLP  
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CARMEN J. BORG, AICP  
URBAN PLANNERS

August 31, 2007

**Via facsimile (letter only) and for hand delivery on September 4, 2007 (letter and attachments)**

Honorable Members of the City Council  
City of San Diego  
202 "C" Street, 2nd Floor  
San Diego, CA 92101

Re: City Council Docket, September 4, 2007: Item-334: Two actions related to Consultant Agreement – Regents Road Bridge and Limited Roadway Changes Project

Dear Honorable Councilmembers:

As you know, this firm represents Friends of Rose Canyon ("FRC") on matters relating to the Regents Road Bridge project ("the Bridge"). We are writing in regard to Item 334 on the City Council's docket for September 4, 2007: Two actions related to Consultant Agreement – Regents Road Bridge and Limited Roadway Changes Project ("proposed Contract"). This letter supplements FRC's previous correspondence regarding a proposed contract for full engineering and design of the Bridge. That correspondence is attached for your reference as Exhibits A, B, C and D.

The proposed Contract would authorize Project Design Consultants ("PDC") to complete 100 percent of the engineering and design of the Bridge at a cost of more than \$4.8 Million before the City Council has certified a project-level Environmental Impact Report ("EIR") for the Bridge. We reiterate FRC's concerns, as detailed in our previous letters, that such an agreement for full engineering and design of the Bridge would:

- (a) commit the City to the Bridge project before completion of the project-level EIR for the Bridge; and
- (b) potentially result in damaging activities in Rose Canyon due to invasive borings, trenchings, and other activities authorized by the proposed Contract.

For both of these reasons, approval of the proposed Contract now – before the City has prepared the environmental review that the City Council recognized in March 2007 was a mandatory prerequisite “*before any implementation, if any,*” of the Bridge – would violate the California Environmental Quality Act (“CEQA”), Pub. Res. Code §§ 21000 *et seq.* (See City Resolution R-302497, attached as Exhibit E [emphasis added]). Moreover, such action would subject the City to significant financial risk; should the eventual project-level EIR lead to major changes in the project or the mitigation, or to the selection of a less harmful alternative, the City will have wasted significant time and millions of dollars on an unusable design, a serious waste of public funds.

**I. Approval of the Proposed Contract for Full Engineering and Design of the Bridge Would Be a “Project” Under CEQA.**

**A. Commitment to the Bridge Project Through Approval of the Proposed Contract Is Prohibited.**

As FRC explained in detail in its January 29, 2007 letter to the City Council (Exhibit A) and its March 12, 2007 letter to the City Attorney (Exhibit C), approval of a contract for full engineering and design of the Bridge would implement the very project that the City has committed to study in a future project-level EIR. Despite the City’s March 27, 2007 commitment to prepare and certify such an EIR before *any* implementation of the Bridge (see Exhibit E), the City has only just a few days ago started the competitive bid process to hire a consultant to prepare such a project-specific EIR.<sup>1</sup> The Request for Proposals seeking consultants to prepare environmental review for the Bridge is attached hereto as Exhibit F. The City’s proposed approach – to implement the Bridge project through the proposed Contract before completing environmental review of the project – would turn CEQA on its head.

There is no dispute that the City must prepare a project-level EIR before commencing implementation of the Bridge. Article 1 of the City Council’s March 27, 2007 Resolution R-302497 could not be plainer:

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<sup>1</sup> Curiously, Section 1 of the proposed Ordinance authorizing execution of the proposed Contract states that the Mayor would be authorized to execute an agreement with PDC “for the purpose of *preparing supplemental environmental document*, obtaining permits, and providing design services” for the Bridge. (City Council docket p. 002289 [emphasis added]). Any authorization now for PDC to prepare environmental review of the Bridge would conflict with the RFP the City just released. (See Exhibit F). We assume this reference to preparation of supplemental environmental review is a typographical error, but we ask the City to confirm before it considers whether to approve the proposed Contract.

[T]he Mayor is authorized to proceed with the preparation of a full, separate, independent project-specific Environmental Impact Report under the provisions of CEQA and its Guidelines for the Bridge Alternative, which the Council must *certify before any implementation, if any, of that Bridge Alternative is approved and commenced.*

(Exhibit E [emphasis added]). Although the memoranda from the City Attorney and the City's outside counsel regarding the proposed Contract do not squarely address CEQA, both support this understanding. (See, e.g., City Attorney Memo [April 4, 2007], City Council docket p.002266, fn.2 and p.002265 [the Bridge project is "contingent upon completion and certification of a project-level EIR" and "further environmental work [is] needed to move forward with the Regents Road Bridge Alternative"]; Kevin Sullivan Memo [July 13, 2007], City Council docket p.002257 [Resolution R-302497 prohibits "implementation of the Regents Road Bridge Alternative [until] completion and certification of a project-level EIR for that alternative"]).

The City cannot seriously contend that approval of the proposed Contract for full engineering and design of the Bridge, at a cost of more than \$4.8 Million, would not constitute a commitment to the Bridge, or commencement of "implementation" of the Bridge. As the minutes of the City Council's August 1, 2006 approval hearing plainly state:

*Implementation* of the Regents Road Bridge Alternative would require design and refinement of the preliminary estimates. *The first stage of implementation* [of the Bridge] would be design and would require future council action for a consultant agreement.

(See Exhibit G [excerpt of minutes of August 1, 2006 City Council meeting, p.50] [emphasis added]). A consultant agreement for design of the Bridge is precisely what is before the City Council here.

A long line of Supreme Court case law supports FRC's position that approval of an agreement for full engineering and design of the Bridge would constitute an improper commitment to the project. (See, e.g., *Muzzy Ranch Co. v. Solano County Airport Land Use Comm'n* (2007) 41 Cal.4th 372, 382-83; *Laurel Heights Improvement Ass'n v. Regents of Univ. of Calif.* (1988) 47 Cal.3d 376; *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, *disapproved on other grounds*, *Board of Supervisors v. Local Agency Formation Comm'n* (1992) 3 Cal.4th 903, 918; *Bozung v. Local Agency Formation Comm'n* (1975) 13 Cal.3d 263; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68; *Citizens for a Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91, *petition for review denied*, June 27, 2007).

In particular, governmental action that is an “essential step [in a chain of actions] leading to potential environmental impacts” is a project subject to CEQA. (*Fullerton*, 32 Cal.3d at 797; *see also Muzzy Ranch*, 41 Cal.4th at 382-83). Here, there can be no doubt that engineering and design of the Bridge are an “essential step” leading to construction of the Bridge.

An agency cannot avoid timely compliance with CEQA merely by conditioning construction of a proposed project on completion of environmental review. As the Supreme Court explained in *Fullerton* and recently confirmed in *Muzzy Ranch*, an agency cannot escape CEQA “merely because further decisions must be made before [projects] are actually constructed.” (*Fullerton*, 32 Cal.3d at 795; *Muzzy Ranch*, 41 Cal.4th at 383; *see also Citizens for a Megaplex-Free Alameda*, 149 Cal.App.4th at 106-07; *Save Tara v. City of West Hollywood* (2007) 54 Cal.Rptr.3d 856, 868, *review granted* (May 16, 2007) 59 Cal.Rptr.3d 439). Thus, City staff’s explanation here that “this action does not include any approval for construction,” and “[t]he project will be brought back to [the] City Council in the future for construction authorization” (Expanded City Council agenda [September 4, 2007], p.82) does not permit the City to avoid compliance with CEQA before approving a contract for full engineering and design of the Bridge.

Nor would boilerplate language in the proposed Contract allowing the City to terminate the proposed Contract for its “convenience” allow the City to dodge its obligations under CEQA. Although it theoretically may be possible for the City to terminate the proposed Contract at some point in the future, CEQA concerns itself with the action that City proposes here and now, which is approval of a contract for 100 percent of the engineering and design of the Bridge, an action which squarely falls within the meaning of a “project” under Public Resources Code section 21065. Moreover, many public agency contracts provide standard language regarding termination for the agency’s convenience. As one treatise opines, “good practice is for the public entity to include a termination for convenience clause in the design agreement, so that a ‘no fault’ termination may be made by the public owner.” (Ernst C. Brown, *California Public Works: Managing Risk & Resolving Disputes* [3rd ed., 2003], at p.27). It simply is inconceivable that public agencies could avoid any CEQA review whatsoever merely by pointing to this standard clause intended to protect the government and taxpayers from the vagaries of public funding and administration. In any event, even if the City were to terminate the proposed Contract, the City would be committed to compensating PDC for work completed through the time of termination. (*See City Council docket p.002304*). Thus, even through this provision the City would not avoid its commitment to the Bridge project.

The City cannot point to its belated effort to prepare a project-specific EIR in order to absolve its decision to proceed full speed ahead *now*, in the absence of environmental review, with full engineering and design of the Bridge. As described in the RFP seeking consultants to prepare that document, the EIR for the Bridge, including alternatives to the Bridge, would not be

certified until October 2009 at the earliest. (*See Exhibit F*). Under the time schedule in the proposed Contract, final design of the Bridge would be nearly complete at the time environmental review of the Bridge is concluded. (*See City Council docket p.002373*). Thus, by the time the agency decision maker receives the final EIR for the Bridge, the \$4.8 Million investment in full design would make approval of the project a fait accompli, a result that CEQA absolutely prohibits.

In sum, City staff's contention that execution of the proposed Contract would not be a "project" under CEQA and thus is exempt from CEQA (*see City Council docket p.002281*), is contradicted by a long line of Supreme Court case law and the City Council's own previous decision as to the appropriate timing of CEQA review. Because the proposed Contract is an essential step toward construction of the Bridge and may result in significant environmental impacts in Rose Canyon, it is clearly subject to CEQA review.

**B. Activities Under the Proposed Contract May Result in Significant Environmental Impacts in the Canyon.**

The proposed Contract also is a "project" under CEQA because its execution may result in significant impacts to biological and hydrological resources in Rose Canyon, in addition to the other significant environmental impacts identified in the Final EIR for the Study (*see Exhibit H*), and the comment letters on that document (*see Exhibit I*). In particular, the proposed Contract would authorize PDC to engage in invasive borings, trenchings, and other destructive activities in Rose Canyon. For example, the proposed Contract would authorize geotechnical tests (Task 1.7.3 and 1.7.4, City Council docket p.002326), geotechnical borings and test pits (Task 3.1.1.2, City Council docket p.002331; Tasks 3.1.4, 3.1.5 and 3.1.6, City Council docket p.002340), and excavation of trenches with backhoes (Task 3.1.2.1, City Council docket p.002331).

The City previously has recognized that geotechnical work may result in significant environmental impacts, and has required project applicants to prepare environmental review under CEQA and obtain approval from the City before engaging in such work. For example, in February, 2005, the City required preparation of environmental review prior to approving geotechnical investigations in Salk Canyon in University City that would involve two trenches and three borings. (*See Report to Hearing Office No. HO-05-022 [February 16, 2005], attached hereto as Exhibit J*). By comparison, under the proposed Contract at issue here the City would authorize PDC to excavate ten borings and five trenches. (*See City Council docket Tasks 3.1.1.2 and 3.1.2.1, City Council docket p.002331; Tasks 3.1.4 and 3.1.5, City Council docket p.002340*).

Importantly, City staff themselves have conceded that environmental review is needed before any borings are taken in Rose Canyon. For example, internal City correspondence

demonstrates that City intended to rely on the EIR for the Study in order to move forward with invasive borings in the Canyon without further review. See Email correspondence attached as Exhibit K (City staff describing that a “goal” of the EIR for the Study is that the document “would be sufficient to allow geotechnical borings in final design without the delay of obtaining a development permit”). Of course, because that review was seriously flawed, it would be foolhardy for the City to rely on the EIR for the Study in order to move forward with geotechnical work in the Canyon.

## **II. Full Engineering and Design of the Bridge Are Not Required to Prepare Project-Level Environmental Review of the Bridge and Alternatives.**

As FRC explained in its January 29, 2007 letter to the Mayor and City Council (*see* Exhibit A), FRC does not object to those tasks in the proposed Contract that will enable the City to conduct the project-level EIR for the Bridge. Thus, FRC explained that it would *not* object to those components of the proposed Contract that provide for public outreach, data collection, mapping, studies, preliminary (or 15 percent) engineering and design, and other similar activities that would not cause any environmental damage to the Canyon and which would contribute to preparation of a project-specific EIR.

Full engineering and design of the Bridge, however, are *not* required in order to comply with CEQA. Thus, FRC strenuously objects to those tasks in the proposed Contract that would result in full engineering and design of the Bridge, would secure permits or other approvals for the project, or may damage environmental resources in Rose Canyon. According to the case law cited above, such activities should not proceed until after the City has prepared and certified an adequate EIR for the project. As the City Attorney’s April 4, 2007 Memorandum recognizes, “final detailed design is commonly deferred to a later segment, since it cannot proceed until final environmental clearance has been received.” (City Council docket p.002265 [citing the Caltrans Local Assistance Procedures Manual, p.10-6]).

Significantly, the State’s highway building agency expressly *prohibits* final design of a project before environmental review is complete:

Compliance with the environmental requirements may occur simultaneously with preliminary engineering, however, *local agencies may not commence with final design* prior to obtaining environmental document approval . . . .

(*See* Caltrans Local Assistance Procedures Manual, p.6-14, attached as Exhibit L [emphasis added]).

The federal government also *prohibits* final design of transportation projects before all environmental review is complete. (*See* Exhibit L [23 C.F.R. § 771.113 (Federal Highway Administration and Federal Transit Administration regulations providing that “final

design activities . . . shall not proceed until the following have been completed: (1)(i) The action has been classified as a categorical exclusion (CE), or (ii) A FONSI has been approved, or (iii) A final EIS has been approved and available for the prescribed period of time and a record of decision has been signed.”)). Thus, it is Caltrans’s and the federal government’s standard practice to defer final engineering and design of transportation projects until environmental review is complete. Likewise here, there is no reason that the City would need to complete 100 percent of engineering and design of the Bridge in order to comply with CEQA.

Indeed, the City previously has recognized that full engineering and design would *not* be required in order to comply with CEQA. For example, the City’s Request For Qualifications seeking consultants for the University City North/South Transportation Corridor Study (“Study”) recognized that “preliminary design of the proposed [project]” would be all that was necessary “to support the proposed environmental document,” and that final design should be deferred until *after* such environmental review is complete. (*See* Exhibit M). The City’s 2003 contract with PDC to prepare environmental review for the Study confirms the City’s understanding that only preliminary design would be required to comply with CEQA. (*See* Exhibit N).

### **Conclusion**

In short, approving the proposed Contract for full engineering and design of the Bridge -- and committing the City to spend nearly \$5 Million -- before the City has prepared and certified an EIR for the project completely inverts the process required by CEQA. Because such sequencing would relegate any future project-specific environmental review to merely “an after-the-fact rationalization of a completed plan,” this approach has been uniformly rejected by the courts. (*See e.g., Save Tara*, 54 Cal.Rptr.3d at 864).

In addition, it is our understanding that the City has yet to resolve the need for state legislation in order to design and build the Bridge in the state-funded habitat grant restoration areas of Rose Canyon. City documents describing the City’s obligation to maintain these lands “in perpetuity,” and relating to the need for such legislation prior to are attached hereto as Exhibit O.

Finally, it is our understanding that the City has not yet addressed the conflict of interest concerns that approval of this proposed Contract would raise under Government Code section 1090. The City Attorney’s July 24, 2007 and April 4, 2007 memoranda on this issue, which are reproduced in the City Council docket for this item at pages 002249 through 002253, and 002263 through 002272, are incorporated herein by reference.

For all of the foregoing reasons, FRC respectfully requests that the City Council decline to approve the proposed Contract as presented, and direct the City to revise the Contract

Honorable Councilmembers

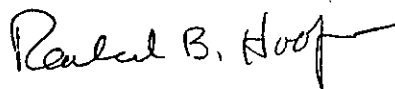
August 31, 2007

Page 8

to strictly limit the Scope of Services to only those preliminary design activities that will enable the City to comply with CEQA and that will not result in environmental damage to the sensitive resources in Rose Canyon. Consistent with its commitment in Resolution R-302497, the City should prepare a "full, separate, independent project-specific [EIR]" and certify that EIR "*before any implementation, if any, of that Bridge Alternative is approve and commenced.*" (Exhibit E [emphasis added]).

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Rachel B. Hooper

#### Attachments

- Exhibit A: January 29, 2007 letter from Shute, Mihaly & Weinberger LLP to the Mayor and City Council
- Exhibit B: February 9, 2007 memo from Shute, Mihaly & Weinberger LLP regarding the City's Environmentally Sensitive Lands regulations as applied to the proposed Bridge
- Exhibit C: March 12, 2007 letter from Shute, Mihaly & Weinberger LLP to Carmen Brock and Michael Calabrese, City Attorney's Office (w/o attachments)
- Exhibit D: July 20, 2007 letter from Marco Gonzalez, Coast Law Group, on behalf of FRC, to the City Council (w/o attachments)
- Exhibit E: City Resolution R-302497 (adopted March 27, 2007; final passage April 2, 2007)
- Exhibit F: August 24, 2007 Request for Proposals for Environmental Impact Report for Regents Road Bridge and Limited Roadway Changes (H084105)
- Exhibit G: Excerpt of minutes of August 1, 2006 City Council meeting
- Exhibit H: Final EIR for the University City North/South Transportation Corridor Study, submitted electronically via two CDs
- Exhibit I: Comment letters of City Attorney's Office, US Fish & Wildlife Service, California Department of Fish & Game, and Friends of Rose Canyon on Final EIR for Study
- Exhibit J: Report to Hearing Offer No. HO-05-022 (February 25, 2005)
- Exhibit K: Email correspondence between Sara Katz and Gordon Lutes, et al. (November 5-6, 2003)
- Exhibit L: Excerpt of Caltrans Local Assistance Procedures Manual, Chapter 6: Environmental Procedures (January 26, 2004); 23 C.F.R. § 771.113



Honorable Councilmembers

August 31, 2007

Page 9

(Federal Highway Administration and Federal Transit Administration regulations)

Exhibit M: Request for Qualifications, University City North/South Transportation Corridor Study (June 21, 2002)

Exhibit N: Excerpt of City agreement with Project Design Consultants for University City North/South Transportation Corridor Study (April 21, 2003)

Exhibit O: City documents regarding Habitat Restoration Grant

cc: Mayor Sanders (letter only via facsimile)

Michael Calabrese (letter only via email) (letter and attachments via hand delivery on September 4, 2007)

Carmen Brock (letter only via email)

Shirley Edwards (letter only via email)

Kevin Sullivan (letter only via email)